DOCUMENT RESUME

ED 117 291 UD 015 720

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TITLE Twenty Years After Brown: Equal Opportunity in Housing.
INSTITUTION Commission on Civil Rights, Washington, D.C.
PUB DATE Dec 75
NOTE 203p.; Fourth report in a series: For the second report in the series, see ED 102 285

EDRS PRICE MF-$0.76 HC-$10.78 Plus Postage
DESCRIPTORS *Civil Rights; Federal Court Litigation; Federal Government; *Government Role; *Housing Discrimination; Housing Industry; Housing Needs; Housing Opportunities; Housing Patterns; Migrant Housing; *Minority Groups; Public Housing; Racial Discrimination; *Sex Discrimination; State Government

ABSTRACT

On the twentieth anniversary of "Brown v. Board of Education" the U.S. Commission on Civil Rights undertook to commemorate the Supreme Court's decision with an examination of civil rights progress between 1954 and 1974. The Commission is publishing a series of concise reports summarizing the status of civil rights in education employment, public accomodations and housing. The first report in the series provided a brief historical background; the second covered equality of educational opportunity, and the third dealt with equality of economic opportunity. This fourth report looks at national housing policies and the extent to which they have been effective in providing equality of opportunity in housing for all America's citizens. It is stated that, at this juncture in our Nation's history, the Commission finds that the forces promoting discrimination in housing hold powerful, if less than universal, sway. These forces will be curbed only by new dedication of national resources and fair housing enforcement efforts to the creation of many more rental and home ownership opportunities for monorities and women of all incomes, in good housing located in a full variety of viable urban neighborhoods, and in rural areas and on native American reservations as well. (Author/JM)

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TWENTY YEARS AFTER BROWN: EQUAL OPPORTUNITY IN HOUSING

A Report of the United States
Commission on Civil Rights
December 1975

Fourth in a series

UD 015 720

U.S. COMMISSION ON CIVIL RIGHTS

The United States Commission on Civil Rights is a temporary, independent, bipartisan agency established by the Congress in 1957 to:

- Investigate complaints alleging denial of the right to vote by reason of race, color, religion, sex, or national origin, or by reason of fraudulent practices;
- Study and collect information concerning legal developments constituting a denial of equal protection of the laws under the Constitution because of race, color, religion, sex, or national origin, or in the administration of justice;
- Appraise Federal laws and policies with respect to the denial of equal protection of the laws because of race, color, religion, sex, or national origin, or in the administration of justice;
- Serve as a national clearinghouse for information concerning denials of equal protection of the laws because of race, color, religion, sex, or national origin; and
- Submit reports, findings, and recommendations to the President and Congress.

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John A. Buggs, Staff Director

LETTER OF TRANSMITTAL

U.S. COMMISSION ON CIVIL RIGHTS
WASHINGTON, D.C.
DECEMBER 1975

THE PRESIDENT
THE PRESIDENT OF THE SENATE
THE SPEAKER OF THE HOUSE OF REPRESENTATIVES

Sirs:

The Commission on Civil Rights presents this report to you pursuant to Public Law 85-315, as amended.

This is the fourth in a series of reports that will examine the extent of civil rights progress in the United States since Brown v. Board of Education, the Supreme Court's landmark school desegregation decision of May 17, 1954. The first report provided historical background for the series. The second report covered the evolution of educational opportunity during the 20 years since Brown. The third report sketched the nature and extent of changes in the economic status of minorities and women. This report presents an overview of developments in housing opportunities for minorities and women, with emphasis on events during the last two decades.

We believe that these reports, issued in commemoration of the 20th anniversary of Brown, may be of help to Federal, State, and local officials, as well as to all Americans concerned with human justice. We hope that these reports will contribute to an informed public discussion of Brown, the status of civil rights today, and paths to equality in our Nation.

We urge your consideration of the information, findings, and recommendations presented here.

Respectfully,

Arthur S. Flemming, Chairman
Stephen Horn, Vice Chairman
Frankie M. Freeman
Robert S. Rankin
Manuel Ruiz, Jr.
Murray Saltzman

John A. Buggs, Staff Director

PREFACE

On September 9, 1957, President Dwight D. Eisenhower signed into law the first Federal civil rights act in the United States in 82 years. Under Part I, the U.S. Commission on Civil Rights was established as a temporary, independent, bipartisan, Federal agency. Former Secretary of State Dean Acheson hailed the entire piece of legislation as the greatest achievement in the field of civil rights since the 13th amendment,[1] and historian Foster Rhea Dulles described the Commission as "but one manifestation of the belated response of a conscience-stricken people to the imperative need somehow to make good the promises of democracy in support of equal protection of the laws regardless of race, color, religion, or national origin."[2]

In fact, both the Civil Rights Act of 1957 and the U.S. Commission on Civil Rights were primarily the result of Brown v. Board of Education,[3] the Supreme Court's landmark school desegregation decision in 1954. It was Southern resistance to compliance with Brown which led to mounting civil rights pressure and the consequent decision of the Eisenhower administration to introduce the civil rights legislation.[4] And it was this same resistance which produced almost a 2-year delay in passage of the civil rights act and creation of the Commission.

The President, in his 1956 state of the Union message, had asked Congress to create a civil rights commission[5] to investigate charges

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1. Dean Acheson, "A Word of Praise," Reporter, Sept. 5, 1957, p. 3.

2. Foster Rhea Dulles, The Civil Rights Commission: 1957-1965 (Lansing: Michigan State University Press, 1968), p. ix.

3. 347 U.S. 483 (1954).

4. Dulles, The Civil Rights Commission, p. 3.

5. To Secure These Rights, the 1947 report of President Harry S. Truman's Committee on Civil Rights, previously had recommended creation of such a commission to study the whole civil rights problem and make recommendations for its solution.

"that in some localities...Negro citizens are being deprived of their right to vote and are likewise being subjected to unwarranted economic pressures." A draft of the administration's proposal then was sent to the Senate and House of Representatives on April 9, 1956. The bill was passed by the House in July but died in committee in the Senate after threat of a filibuster. President Eisenhower resubmitted the bill as he began his second term, and an acceptable compromise version of the legislation finally was approved despite Southern attacks and characterization of the proposed Commission on Civil Rights as an agency "to perpetuate civil wrongs."

Initially established for a period of 2 years, the Commission's life has been extended continuously since then, most recently on October 14, 1972, for a period of 5½ years.

Briefly stated, the function of the Commission is to advise the President and Congress on conditions that may deprive American citizens of equal treatment under the law because of their color, race, religion, sex, or national origin. (Discrimination on the basis of sex was added to the Commission's jurisdiction in 1972.) The Commission has no power to enforce laws or correct any individual injustice. Basically, its task is to collect, study, and appraise information relating to civil rights throughout the country and to make appropriate recommendations to the President and Congress for corrective action. The Supreme Court has described the Commission's statutory duties in this way:

> its function is purely investigative and factfinding. It does not adjudicate. It does not hold trials or determine anyone's civil or criminal liability. It does not issue orders. Nor does it indict, punish, or impose any legal sanctions. It does not make determinations depriving anyone of his life, liberty, or property. In short, the Commission does not and cannot take any affirmative action which will affect an individual's legal rights. The only

> purpose of its existence is to find facts which may subsequently be used as the basis for legislative or executive action.[6]

Specifically, the Civil Rights Act of 1957, as amended, directs the Commission to:

> Investigate complaints alleging denial of the right to vote by reason of race, color, religion, sex, or national origin, or by reason of fraudulent practices;
>
> Study and collect information concerning legal developments constituting a denial of equal protection of the laws under the Constitution because of race, color, religion, sex, or national origin, or in the administration of justice;
>
> Appraise Federal laws and policies with respect to the denial of equal protection of the laws because of race, color, religion, sex, or national origin, or in the administration of justice;
>
> Serve as a national clearinghouse for information concerning denials of equal protection of the laws because of race, color, religion, sex, or national origin;
>
> Submit reports, findings, and recommendations to the President and Congress.

The facts on which the Commission's reports are based have been obtained in various ways. In addition to its own hearings, conferences, investigations, surveys, and related research, the Commission has drawn on the cooperation of numerous Federal, State, and local agencies. Private organizations also have been of immeasurable assistance. Another source of information has been State Advisory Committees that, under the Civil Rights Act of 1957, the Commission has established throughout the country.

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6. Hannah v. Larche, 363 U.S. 420, 441 (1960). Louisiana voting registrars sought to enjoin the Commission from conducting a hearing into discriminatory denial of voting rights. When the lower court held that the Commission's procedural rules were not within its authority, the Commission appealed to the Supreme Court. The Court reversed the judgment below and held that the Commission's rules did not violate the due process clause of the fifth amendment.

Since its creation, the Commission has issued more than 200 reports and made over 200 recommendations to the President and the Congress. These recommendations have encompassed the fields of voting, housing, employment, education, administration of justice, equality of opportunity in the armed forces, and Federal enforcement of civil rights laws. The majority of these recommendations eventually have been included in Federal Executive orders, legislation, and program guidelines. It has been reported that the "Civil Rights Act of 1964 and the Voting Rights Act of 1965 were built on the factual foundations of racial discrimination portrayed in the Commission's reports and in part they embodied these reports' specific recommendations for remedial action."[7]

Throughout its 18-year-history, the U.S. Commission on Civil Rights has "established national goals, conceived legislation, criticized inaction, uncovered and exposed denials of equality in many fields and places, prodded the Congress, nagged the Executive, and aided the Courts. Above all, it has lacerated, sensitized, and perhaps even recreated the national conscience."[8] The extent to which the Commission has achieved its results perhaps may be attributed in large measure to its continuing concern with specific constitutional rights on a nationwide basis and in all fields affected by race and ethnicity. "The interrelationship among discriminatory practices in voting, education, and housing made it impossible to think that equal protection of the laws could be maintained by action in one field alone: the overall problem had to be simultaneously attacked on all fronts."[9]

On the 20th anniversary of Brown v. Board of Education, then, it seems appropriate for the U.S. Commission on Civil Rights to commemorate the Supreme Court's decision with an examination of civil rights progress between 1954 and 1974. The Commission wishes to honor Brown by showing

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7. Dulles, The Civil Rights Commission, p. xi.
8. Berl Bernhard, "Equality and 1964," Vital Speeches, July 15, 1963.
9. Dulles, The Civil Rights Commission, p. 79.

that it is a decision which continually affects one of the most vital areas in the life of our Nation. The Commission wishes to call to mind clearly the meaning and promise of Brown as intrinsic elements in the fulfillment of American ideals. The Commission wishes to commemorate Brown by relating the Supreme Court's judicial pronouncement to the lives of human beings.

The Commission, therefore, is publishing a series of concise reports summarizing the status of civil rights in education, employment, public accommodations and housing. In which ways, and to what extent, have the lives of black Americans and members of other minority groups changed? Where has progress been made, where has it been limited, where has it been nonexistent, and why? How is Brown as yet largely unfulfilled? What must be done to bring about the racial equality affirmed by the Supreme Court 20 years ago?

The Commission seeks through these reports to commemorate Brown v. Board of Education as a landmark, a divide in American race relations--as the starting point for a second American revolution. If that revolution, within the limits of American law and based upon the law, has not been concluded, this is more a comment on those of us who have been called upon to complete the task than on the judgment which set the task in the beginning.

The first report in the series provided a brief historical background. The second report covered equality of educational opportunity. The third report dealt with equality of economic opportunity, and, more particularly, with employment (and unemployment), income, and public accommodations. This fourth report looks at national housing policies and the extent to which they have been effective in providing equality of opportunity in housing for all America's citizens.

ACKNOWLEDGEMENTS

The Commission is indebted to the following staff members who participated in the preparation of this series of reports:

Eugene S. Mornell
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Sonja Butler
*Eleanor Clagett
*Ruby Daniels
Martha Grey
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Wanda Johnson
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Special assistant also was provided by Karen Arrington, Caroline Davis Gleiter, *David H. Hunter, Moses Lukaczer, and Mabel M. Smythe. Eleanor Clagett was primarily responsible for the preparation of this report.

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Chapter 1

DISCRIMINATION IN HOUSINC--SUBVERSION OF NATIONAL HOUSING POLICY

Justice Harlan, in his dissenting opinion in Plessy v. Ferguson,[1] stated that personal liberty is "'the power of locomotion, of changing situation, or removing one's person to whatsoever places one's own inclination may direct, without imprisonment or restraint unless by course of law.'"[2] Racial, ethnic, and sex discrimination, which until very recently was openly enforced by real estate agents, builders, developers, mortgage lenders, landlords, and public officials, has severely restricted the housing choices, and hence the personal liberty, of minorities and women. Because free access to housing is basic to the enjoyment of many other liberties and opportunities, the restrictions in housing placed on minorities and women have far reaching consequences which touch virtually every aspect of their lives.

NATURE AND EFFECTS OF DISCRIMINATION

HISTORIC OUTLINES OF HOUSING DISCRIMINATION

The assumption that whites have the right to deny minorities the opportunity to purchase or rent property because of their race or ethnic origin began as a fundamental tenet of the institution of slavery. With passage of the 13th amendment in 1865 and the abolition of slavery, Federal legislators began more than a century of legal and private efforts to eradicate this assumption, and the practices to which it has led.

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1. 163 U.S. 537, 552 (1896), p. 557.
2. Id. at 557, quoting 1 Blackstone, Commentaries *134.

The Civil Rights Act of 1866[3] was enacted to guarantee to "/a/ll citizens of the United States...the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property." With respect to the guarantee of the full enjoyment of property rights spelled out by the act, the Supreme Court in Jones v. Alfred H. Mayer Co.[4] made clear that Congress intended "to prohibit all discrimination against Negroes in the sale or rental of property--discrimination by private owners as well as discrimination by public authorities."[5]

In 1868, the 14th amendment was ratified. It assures citizenship to "/a/ll persons born or naturalized in the United States, and subject to the jurisdiction thereof" and prohibits a State from making or enforcing any laws which abridge the privileges or immunities of citizens of the United States, and from depriving "any person of life, liberty, or property without due process of law," or denying "any person within its jurisdiction the equal protection of the laws."[6]

Despite the intent of Congress and the provisions of Federal law, the force of individual and corporate prejudice remained undaunted. The law of 1866 lay partially dormant for many years while discrimination in housing grew to become a fundamental operating principle of the Nation's housing industry. The result was the creation of two housing markets, one for whites and one for blacks, and later for other minorities as well, separate and inherently unequal.

A host of privately-generated and publicly-legislated practices has been utilized to create and perpetuate racial and ethnic discrimination in housing. Early in the 20th century, many American communities enacted zoning ordinances requiring block-by-block racial segregation.

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3. 42 U.S.C. §§1981, 1982 (1970).
4. 392 U.S. 409 (1968).
5. Id. at 421.
6. U.S. CONST. amend. XIV, § 1.

State governments, which have delegated zoning powers to local governments, supported the establishment of these ordinances, many of which were upheld in State courts. A number of these ordinances were maintained long after 1917, when they were declared unconstitutional by the Supreme Court in Buchanan v. Warley.[7] Legal attempts to enforce them in the courts were still being made in the 1950's.[8]

A second device that came into widespread use after 1917 was the restrictive covenant. This was a written agreement between the buyer and the seller of a house whereby the buyer promised not to sell, rent, or transfer his property to families of a specific race, ethnic group, or religion. Although the covenants were private agreements, they achieved the status of law through enforcement by the judicial machinery of the State.[9] Where residents of entire neighborhoods or communities joined together to use restrictive covenants, and to seek their enforcement by the courts, if necessary, minority group persons were denied access to all or a large portion of the housing inventory.

Perpetrators of the racially-restrictive covenants operated freely for three decades before the Supreme Court ruled in Shelley v. Kraemer[10] that enforcement of restrictive covenants by State courts was a violation of the 14th amendment. This ruling, which came in 1948, made restrictive covenants judicially unenforceable; but, because of entrenched racism and the business interests of white real estate brokers, their use continued in many communities. Only among persons familiar with this ruling or interested in discovering the actual legal

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7. 245 U.S. 60 (1917).

8. U.S., Commission on Civil Rights, Understanding Fair Housing (1973), p. 4 (cited hereafter as Understanding Fair Housing).

9. Ibid., p. 4.

10. 334 U.S. 1 (1948).

effect of a restrictive covenant were there those who might question the covenant's validity and the necessity to act in accordance with its provisions.

White real estate brokers operated on the assumption that residential segregation was a business necessity and morally correct. Real estate agents promoted the use of restrictive convenants and refused to show houses located in white residential areas to prospective minority purchasers. In the 1920's, the National Association of Real Estate Brokers (NAREB) counseled its members not to sell property to individuals of racial groups whose ownership allegedly would diminish the value of other property in the area. As late as 1950, NAREB's Code of Ethics stated, in part:

> A Realtor should never be instrumental in introducing into a neighborhood, by character of property or occupancy, members of any race or nationality, or any individual whose presence will clearly be detrimental to property values in the neighborhood.[11]

Private builders and mortgage lending institutions acted in accordance with the separate market principle. Thus, in the period of the late 1940's, during which the building boom supplied a substantial number of new houses in large subdivisions throughout urban areas of the country, the only new housing available to minorities consisted of a comparatively small number of homes located in minority enclaves and designated for minority occupancy.[12] Financial institutions refused to finance builders who desired to provide housing on a nondiscriminatory basis and denied loans to home buyers--black or white--who desired to purchase housing in neighborhoods in which most or all of the residents were not the race of the homeseeker. In addition, many mortgage lenders refused outright to provide loans to blacks, greatly

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11. Code of Ethics, 1928, Article 34.

12. Understanding Fair Housing, p. 3.

diminishing their opportunity to purchase housing, even in black neighborhoods. Typically, blacks could only secure mortgages under unfavorable terms compared to whites. They were required to pay higher interest rates and to make larger downpayments.

Housing discrimination against women as individuals, as contributors to the family income, and as heads of families has also been a practice of long standing. In contrast to racial and ethnic discrimination in housing, however, discrimination against women was not questioned extensively until recent years. In the mortgage lending industry, discrimination against women was enforced through the widely accepted practice of discounting the wife's income when determining a family's eligibility for a mortgage. It has also been expressed in outright refusal to approve a woman's application for a mortgage, regardless of her marital status, and in the use of much stricter credit and other criteria when consideration has been given to her application.[13]

In the rental market, many landlords and apartment managers have traditionally discounted the wife's income when a couple applies for an apartment. Sex discrimination has also resulted, for example, in the refusal by landlords to accept court-ordered, child support payments as part of a separated or divorced woman's income when considering her eligibility to rent. Similarly, landlords have often automatically refused to rent to families headed by women.

Discrimination on the basis of sex has combined with discrimination on the basis of race or ethnicity to place minority women in double jeopardy in the housing market. The combination of racial and sex discrimination in employment and housing relegates poor minority women to poverty more pervasive in many respects than that experienced by any other group in the Nation.

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13. U.S., Commission on Civil Rights, Mortgage Money, Who Gets It? (1974), Chapter 4 (cited hereafter as Mortgage Money).

THE NATURE OF DISCRIMINATION

Discrimination in housing operates to deny housing opportunities not only to minorities and women, but to lower-income Americans as a group. Its racial, ethnic, and sexist aspects are seen in the denial of housing opportunities to minority persons and women solely because they are black, of Spanish speaking background, Native American, Asian American, or female. Racial and ethnic discrimination arises from the belief of many whites that blacks, in particular, as well as other minorities, are inferior and undesirable as neighbors.[14] Translated into the workings of the housing market early in this century, individual prejudice combined in a legally and politically sanctioned system to keep racial and ethnic minorities out of neighborhoods in which whites desired to live.

Sex discrimination in the mortgage lending industry arises from the widely believed myth that single women are inherently unstable and incapable of conducting their own affairs. They are believed to need the protection of a husband or father.[15] About women as tenants, and particularly lower-income women with children, there is often an arbitrary assumption that they cannot be trusted to meet rent-paying and apartment maintenance responsibilities or control the behavior of their children.

The economic aspects of housing discrimination arise in the deliberate exclusion of low- and moderate-income housing for poorer families from residential areas in which middle- and upper-income families live. Another manifestation is seen in wholesale renovation of an old, central city neighborhood from which poorer residents are expelled as the housing turns over to middle- and upper-income occupancy. Many persons who justify segregation by class would not admit to racist attitudes. For the large proportion of minority persons who are poor, however, the distinction is academic; the effects of either type of discrimination are the same.

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14. U.S., Commission on Civil Rights, Equal Opportunity in Suburbia (1974), pp. 14-15 (cited hereafter as Equal Opportunity).

15. Mortgage Money, p. 27.

The desire to exclude housing for the poor from one's neighborhood, or community, has not been voiced solely by whites. Middle-income blacks, for example, on a number of occasions have objected strenuously to the location of low-rent public housing in their residential areas.[16] A point that must be noted, however, is that, in many instances, the only neighborhoods outside minority low-income areas that have been selected for publicly-assisted housing intended for poor black families have been neighborhoods in which middle-income black families live.

Exclusion of housing for poorer families is often couched in terms of opposition to increases in or diversion of tax monies to pay the greater welfare, education, and other social costs associated with the provision of essential public services to low-income families. In many instances, however, such opposition serves to conceal fears and prejudices about the perceived behavior and lifestyle of poor families whose presence in working-class and middle-class neighborhoods is considered a threat to the neighborhood environment.[17] Expression of exclusionary motives is seen in a variety of zoning and other practices that dictate, for example, minimum lot size or maximum size of multi-family units within a suburban jurisdiction.

EFFECTS OF DISCRIMINATION ON HOUSING OPPORTUNITIES OF MINORITIES AND WOMEN

Housing discrimination set in motion a nationwide trend towards residential segregation and concentration of urban blacks in certain, well-defined, residential areas of almost all cities. Generally, these areas contained some of the oldest residential buildings in the community. During the late 1940's and 1950's, blacks and other minorities were excluded, on virtually a wholesale basis, from access to the new housing supply resulting from unprecedented housing production (over 1 million

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16. See, e.g., El Cortez Heights Residents and Property Owner's Ass'n v. Tucson Housing Authority, 10 Ariz. App. 132, 457 P.2d 294 (1969).

17. Cf. Nucleus of Chicago Homeowners Ass'n v. Lynn, 372 F. Supp. 147 (N.D. Ill. 1973).

housing units per year). Occasionally, concentrations of isolated minorities became engulfed by suburban growth. Although these areas became a part of white suburban "rings" they did not represent free access for minorities to the suburban housing market; indeed, in some instances, such communities were displaced through the expropriation of their land by developers and local governing jurisdictions.

Housing production, and concomitant suburban development, continued at an accelerated pace during the 1960's. Despite some changes in discriminatory policies and practices, entrenched patterns of residential segregation continued. Even had housing discrimination not existed in these formative years, the large proportion of minorities[18] who were poor would not have been able to afford the new housing being supplied in the suburbs. Publicly- or privately-developed low-cost housing was conspiciously absent from most suburban jurisdictions.

This pattern of suburban development was particularly characteristic of larger urban areas of the Northeast and Midwest, to which blacks from the South began moving in substantial numbers after the First World War. It was repeated in southwestern and western cities such as Dallas, Los Angeles, Las Vegas, Denver, and, to a lesser extent, San Francisco and Oakland, as the black population of these cities increased.

In the southern urban areas, residential separation of blacks and whites initially was not as universal. Interracial social relationships were well defined and, as long as the superior status of whites was clearly recognized by all concerned, blacks living in close proximity to whites did not present a threat to white status--or property values.

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18. Although numerically there are more white people who are poor, in recent decades the proportion of the white population in this category has been substantially below the proportion in the minority population and in families headed by women. In 1973, 31.4 percent of blacks, 21.9 percent of persons of Spanish origin, and 32.2 percent of families with female head were below the low-income threshold of $4,540 for a nonfarm family of four. Only 8.4 percent of the white population was at this level of poverty. Of Native Americans, 38.3 percent were below the poverty level in 1969 (the latest year for which census data are available for this group). U.S., Dept. of Commerce, Bureau of the Census, Current Population Reports, Series P-60, No. 98, "Characteristics of the Low-Income Population: 1973" pp.2, 8; Series PC(2)-1F, "American Indians" (1973), p.120.

In recent decades, however, growing urban centers of the South, such as Atlanta, have come to manifest patterns of racial concentration similar to those in metropolitan areas outside the South.

As black urban populations have grown, through natural increase and immigration from the rural South, pressures have mounted to expand the housing supply for blacks. Because of discrimination, few new homes have been available to blacks, whose major source of additional housing has been in long established neighborhoods nearest the areas of black concentration.

The expansion of these areas has been facilitated by the movement of thousands of whites who, attracted by the prospect of newer, more spacious housing in quieter, less congested, residential suburbs; better quality public education, and newer, more convenient shopping facilities, have left older, central city neighborhoods to take up life in the suburbs. In numerous instances whites have fled from the central city, fearing substantial decline in property values and the quality of public school education as blacks moved into areas that formerly had been all white.

In many instances, real estate agents have abetted this process of racial change by playing on white fears and prejudices and inducing panic selling by whites. Particularly in the decades since the Second World War, this process has been repeated in countless neighborhoods across the Nation. There have been exceptions to the mass exodus of whites from racially changing neighborhoods, but the incidence of stable, integrated, residential patterns is rare.

Thus, by 1970, in every one of 47 cities with black populations in excess of 50,000, the great majority of blacks lived in predominantly black census tracts.[19] In contrast, between 1950 and 1970, blacks constituted approximately 5 percent of the suburban population. It has been estimated that, if present trends in movement continue

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19. See table 5, pp. 128-29.

unabated, by the year 2000 the proportion of whites living in central cities will drop from about 40 percent in 1970 to 25 percent; but the proportion of blacks will only decrease from 79 percent in 1970 to between 70.1 and 74.8 percent.[20]

However, since the onset of a high rate of inflation, the decline in housing production, and the energy crisis, other economic forces have come into play that may slow this trend, at least in some metropolitan areas. As residential growth has declined at the urban fringes of these areas, pressures have mounted to accommodate the desires of white middle- and upper-income families to find housing in central city neighborhoods. Housing values have rapidly escalated in a number of neighborhoods where lower-income minority families live. In some cities owners who have been renting to lower-income minorities have opted to terminate these rentals in order to renovate their property or to sell it for purposes of conversion to condominiums, thereby cashing in on higher rent or sale values made possible by the new demand for central city housing. This counter trend to suburban expansion may grow if pressures increase to renovate existing housing stock in higher density, central city neighborhoods where energy utilization is more efficient. If gasoline prices continue to rise, a move to the central city could also mean substantial savings in commuting expenses for many families now living in the suburbs.

Declining housing construction and exclusionary zoning in communities on the fringe of metropolitan areas and concomitant pressures for middle- and upper-income housing in central cities catch lower-income families, and particularly lower-income minority families, in a vise that, if it closes, will create even greater shortages of lower-income housing.

In addition to residential segregation, the effect of discrimination has been to sustain the inferior housing conditions in which lives a

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20. U.S., Department of Commerce, Bureau of the Census, "Population Inside and Outside Central Cities by Race: 2000," in Hearing Before the U.S. Commission on Civil Rights, Washington, D.C., 1971, p. 1087.

greater proportion of minorities and families headed by women, particularly minority women, than do whites and families headed by males.[21] Generally speaking, the worst urban housing conditions are found in central city neighborhoods. It is here that congestion, lack of adequate public facilities and services, and crime combine with poor housing to intensify the misery of poverty existence.

In 1973, 8.4 percent of all persons in poor white families resided in low-income areas of central cities. In contrast, 40.4 percent of all persons in poor black families, lived in such areas. Among all persons in poor families residing in these areas, 68.4 percent were persons in families with a black female head.[22] Concentrations of Spanish speaking populations of Mexican or Puerto Rican origin have also located in such areas, owing in large part to racial and ethnic discrimination in housing.[23]

A host of other social problems stems, at least in part, from discrimination in housing. Residential segregation has contributed to inequality in job opportunities, racially impacted and differentially endowed schools, greater tax burdens in central cities to support higher social service costs, and a distorted pattern of urban growth. As the U.S. Commission on Civil Rights found in 1961, housing discrimination "intensifies the critical problems of our cities: slums whose growth is abetted by the racial ghetto; loss of tax revenue and community leadership through flight to the suburbs of those financially (and racially) able to leave--all this in the face of growing city needs for transportation, welfare, and municipal services."[24]

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21. Data on housing conditions of minorities and families headed by women are provided in Chapter 3.

22. U.S., Department of Commerce, Bureau of the Census, Characteristics of the Low Income Population: 1973, Current Population Reports, series P. 60, no. 98, table 9.

23. Connecticut State Advisory Committee to the U.S. Commission on Civil Rights, El Boricua: The Puerto Rican Community in Bridgeport and New Haven (1973) (cited hereafter as El Boricua); Pennsylvania State Advisory Committee to the U.S. Commission on Civil Rights, In Search of a Better Life (1974) (cited hereafter as In Search of A Better Life).

24. 1961 Report of The U.S. Commission on Civil Rights: Vol. 4, Housing p. 1 (cited hereafter as Housing).

Discrimination in the urban housing market has its counterpart in America's rural areas. By some measures, rural minorities have fared even worse than their urban counterparts in their efforts to acquire adequate housing. With few exceptions, federally assisted housing programs[25] have offered the only means for improvement of rural housing conditions. Until very recently, rural blacks and Mexican Americans were openly discriminated against as recipients of this assistance.[26]

Insensitivity on the part of the public and the Federal Government to the desperate housing needs of Native Americans living on reservations has only recently begun to change. Reservation Indians are totally dependent on Federal housing assistance to improve the conditions in which they live. Yet, Federal programs to provide decent housing for Native Americans began only in the 1960's.[27] Maladministration of these programs by Federal agencies has seriously impeded the beneficial impact even this meager assistance was intended to provide.[28]

In the past two decades, the enactment of Federal, State, and local open occupancy laws and a decline in public approval of housing discrimination have begun to undermine the forces that have restricted the right of minorities to a free choice in the selection of housing and residential location. In response, however, opponents of fair housing have resorted to more subtle and secretive methods, and the struggle

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25. The Farmer's Home Administration provides financial assistance for homeownership, home repair and farm labor housing in rural areas. See page 17.

26. U.S., Commission on Civil Rights, Equal Opportunity in Farm Programs, (1965) (cited hereafter as Equal Opportunity in Farm Programs).

27. For a brief description of these programs, see pages 51-52.

28. Housing Assistance Council "Toward an Indian Housing Delivery System" (paper prepared for the HUD National Indian Housing Conference, Nov. 14-16, 1974), p. 7.

to achieve equal opportunity in housing is far from over. Although blacks today can purchase or rent property outside ghetto neighborhoods, few can do so without great difficulty, inconvenience, and costs of an economic, social, and psychic nature.[29]

The benefits that have come from this struggle have been confined largely to middle- and upper-income minorities. Lower-income minority families have fared much worse, despite the Nation's commitment in 1949[30] to provide "a decent home and a suitable living environment for every American family."[31] Indeed in the two and a half decades since passage of the Housing Act of 1949, it has been the persistent, unrelenting housing needs of the poor that have been least tractable to solutions offered by a variety of federally-sponsored, lower-income housing programs. Failure to achieve this objective has had its severest impact on poor, and especially elderly, minorities.

The lesson of the past two decades confirms that the attempt to improve lower-income, minority housing conditions within the context of institutionally-racist housing markets alleviates few problems in the long run. It does not alleviate racial isolation and consequent racial antipathy among whites and minorities, improve the pattern of urban growth, reduce racial imbalance in public schools, or alleviate the inequitable financial burden on central city governments, which still must pay the extra costs associated with providing public services to a large poor population.

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29. John F. Kain, "Theories of Residential Location and Realities of Race" (paper prepared for the Conference on Savings and Residential Finance in Chicago, May, 1969), p. 11.

30. Housing Act of 1949, 63 Stat. 413, as amended (codified in scattered sections of 12, 42 U.S.C. (1970)).

31. 42 U.S.C. § 1441 (1970).

FEDERAL LEGISLATION

LEGISLATION TO PROVIDE DECENT HOUSING

Federal involvement in the Nation's housing industry began in the early 1930's when Congress provided programs to counter the collapse of the housing economy during the Great Depression. Initial efforts consisted of a series of "pump-priming" measures that were designed to stimulate the private business sector to construct housing and to help individuals to retain their homes or to purchase new housing.[32]

The Federal Deposit Insurance Corporation and the Federal Savings and Loan Insurance Corporation provided new protections for the investments of small depositors with the purpose of attracting a steady stream of deposits and savings from which loans for housing construction might be financed. Through the Home Owner's Loan Corporation (HOLC) program,[33] emergency loans on a new, long-term, self-amortizing[34] basis were made available to homeowners to refinance defaulted and foreclosed home loans. Slum clearance and a modest program of construction or repair of low-cost housing projects was facilitated by the creation of the Public Works Administration which provided many unemployed persons with jobs.[35]

In 1934 Congress replaced the emergency HOLC program with a permanent Federal Housing Administration (FHA) to provide Federal insurance on long-term and low downpayment home mortgage loans for new construction, resale,

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32. U.S., Department of Housing and Urban Development, Housing in the Seventies (1974) p. 8 (cited hereafter as Housing in the Seventies).

33. Homeowner's Loan Act of 1933, 12 U.S.C. §§ 1461-1468 (1970).

34. A loan is self-amortizing (self-retiring) when provision is made for the direct reduction of the loan principal through fixed interest rate, equal monthly payments.

35. Act of June 16, 1933, Chap. 90, §§ 201-221, 48 Stat. 195.

and rehabilitation. A second major aspect of the National Housing Act of 1934[36] was the authorization of the formation of private secondary mortgage markets, particularly for the new, long-term mortgages the Government had fostered through the FHA program.[37] In 1938, the Federal National Mortgage Association ("Fannie Mae") was created to act as a conduit between idle pools of savings and borrowers of funds for new construction and repair.[38]

The programs initiated in these early years of Federal involvement in housing permanently altered the nature of housing credit markets and created several institutions that continue to exercise vast influence over the Nation's housing industry. As HUD itself recognizes:

> It is difficult to comprehend what the housing credit market was like before these institutions were created. Today, Americans take for granted a private mortgage credit market that offers 30-year low downpayment loans on homes and that recently has been supporting the construction of over 2 million new housing units annually.
>
> In the 1920's when the population was about half of today's, annual production averaged about 600,000 units per year, and the family mortgage constituted a major financial burden. Until the Federal laws of the early 1930's, the typical home mortgage was for 1 to 5 years--and seldom longer than 10 years. Loans for half the value of the property carried a high interest rate and had to be repaid in full or refinanced at maturity. The prime mortgage was often accompanied by second, third, and sometimes fourth mortgages, at still higher interest rates due to their lesser claim on the property.39

In the United States Housing Act of 1937,[40] Congress created the first permanent direct subsidy program to provide housing for low-income

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36. 48 Stat. 1246 (codified in scattered sections of 12, 41, 49 U.S.C. (1970)).

37. 12 U.S.C. § 1738(a) (1970).

38. 12 U.S.C. §§ 1716-1732c (1970).

39. Housing in Seventies, p. 8.

40. 50 Stat. 888 (codified in scattered sections of 42 U.S.C. (1970)).

families to replace the Public Works program. The principal aims of this legislation were to alleviate present and recurring unemployment and at the same time remedy the unsafe and unsanitary housing conditions and acute shortage of decent housing suffered by low-income families. The Federal Government agreed to pay the annual principal and interest on long-term tax-exempt bonds that financed construction of housing by semi-autonomous local public bodies (local housing authorities) authorized by State law.

Since the Depression-born initiatives of the 1930's the early Federal housing programs have been expanded or replaced by new ones, and complementary Federal community development programs have been added. Under the Servicemen's Readjustment Act of 1944,[41] the government has provided a home loan guarantee program to assist veterans in the purchase of homes. In the Housing Act of 1949, Congress enacted the first comprehensive housing and community development legislation, providing substantial increases in funding for low-rent public housing,[42] a new program of urban redevelopment,[43] and authorization for the first time of a rural housing program, which provided for loans and grants for the construction or rehabilitation of farm dwellings.[44]

Experience with urban redevelopment showed that effective renewal must encompass a broader program than slum clearance. The Housing Act of 1954,[45] therefore, expanded the earlier program to embrace

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41. 58 Stat. 284 (codified in scattered sections of 38, 42 U.S.C. (1970)).

42. 63 Stat. 413, 42 U.S.C. §§ 1401 et seq. (1970), as amended, 42 U.S.C. §§ 1402 et seq. (Supp. III, 1973).

43. 42 U.S.C. §§ 1450 et seq. (1970), as amended, 42 U.S.C. §§ 1452b et seq. (Supp. III, 1973).

44. 42 U.S.C. §§ 1471 et seq. (1970), as amended, 42 U.S.C. §§ 1471 et seq. (Supp. III, 1973).

45. Housing Act of 1954, 68 Stat. 590 (codified in scattered sections of 12, 18, 20, 31, 38, 40 U.S.C. (1970)).

activities aimed at total community improvement. For the first time, preservation and rehabilitation of existing structures was emphasized in the requirement to include a program for strict code enforcement in a community development plan. Federal regulations required, as part of the plan, that communities analyze the need for housing of families displaced by urban renewal activities, provide for relocation, and ensure community-wide citizen participation in the planning of program activities.[46] In the same act Congress authorized an entirely new program to provide additional accommodations for displaced families, familiarly known as section 221 housing.[47] In 1959 Congress established a loan program, known as the section 202 program, to assist private nonprofit corporations in providing housing and related facilities for the elderly.[48]

In the 1960's Federal assistance was initiated for other types of community development activities--such as the construction of water and sewer lines and neighborhood facilities,[49] open space projects,[50] and highways[51]--as well as programs to promote regional and metropolitan comprehensive planning[52] and the development of new communities.[53]

The period of the 1960's also marked the start of a variety of new programs to provide housing for lower-income families and the elderly. In the Housing Act of 1961,[54] rehabilitation and conservation of existing housing received additional stimulus both inside and outside urban renewal areas and the rural housing program was made available to purchasers and owners of nonfarm housing in rural areas.[55]

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46. U.S., Housing and Finance Agency, Program for Community Improvement (Workable Program (1960)).

47. 12 U.S.C. §1715l (1970).

48. 12 U.S.C.A. §1701q (1975).

49. 42 U.S.C. §§3101-3108, as amended, 42 U.S.C. §§3102, 3108 (Supp. III, 1973).

50. 42 U.S.C. §§1500-1500a-c (1970), as amended, 42 U.S.C. §1500d (Supp. III, 1973).

51. See U.S.C. Title 23, Highways. Federal aid for highway construction began in the 1950's and was expanded in the 1960's.

52. 42 U.S.C. §§3331-3339, 4501-4503 (1970), as amended, 42 U.S.C. §§3334, 3338 (Supp. III, 1973).

53. 42 U.S.C. §§4511-4532 (1970), as amended, 42 U.S.C. §§4514, 4519 (Supp. III, 1973).

54. 75 Stat. 149 (codified in scattered sections of 12, 15, 40, 42 U.S.C. (1970)).

55. 42 U.S.C. §§1471 (1970).

Other new programs provided homeownership opportunities for low- and moderate-income families and rental opportunities outside the traditional public housing program.[56] Other programs were designed to provide rental housing for families with incomes above public housing limits but too low to afford rents in standard, nonsubsidized housing. All of these programs were a response to a renewed emphasis by Congress to direct the energies of the Nation towards accomplishment of the goals of the 1949 Housing Act.

In the public housing program, stronger emphasis was placed on the construction of lower density projects for families. In 1965, Congress authorized the establishment of a variation in the public housing program that permitted local housing authorities to lease units in privately-owned structures and make them available to families eligible

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56. In 1961, Congress authorized a new, subsidized, below-market-interest-rate mortgage insurance program to provide rental housing for moderate-income families (Section 221(d)(3) of the 1961 Housing Act, 12 U.S.C. §1715l(d)(3) (1970); 1715l(d)(3) (Supp. IV, 1974). Other liberalized programs were instituted to promote the acquisition, rehabilitation or construction of housing for low- and moderate-income families: Section 221(d)(2); section 221(d)(3) market interest rate; section 221(d)(4). By December 1972, 1.1 million units had been insured under these programs.

In 1965, Congress authorized the establishment of the rent supplement program, to provide a Federal payment to meet a portion of the rent of low-income families in privately-owned housing built with FHA mortgage insurance assistance (12 U.S.C. §1701s (1970)). Until 1969, most of the rent supplement payments went to tenants in section 221(d)(3) market interest rate housing. The Housing Act of 1969 provided that up to 40 percent of the units in the new section 236 subsidized housing program (12 U.S.C. §1715z-1 (1970)) could be occupied by families receiving rent supplement assistance. (12 U.S.C. §1701s(h)(1)(D) (1970)).

for regular public housing. In later years this program, known as section 23 leased housing, became a major subsidized housing program.[57]

New Initiatives in Housing, 1965-1967

In 1965, Congress, "in recognition of the increasing importance of housing and urban development in our national life...," created the Department of Housing and Urban Development (HUD) "to achieve the best administration of the principal programs of the Federal Government which provide assistance for housing and for the development of the Nation's communities."[58] The functions of a number of separate agencies with housing and community development responsibilities were brought under the administrative control of the Secretary for Housing and Urban Development.[59]

As the administration of housing and urban development programs was being reorganized, the urban disturbances of the mid-1960's focused attention on the poor housing and other conditions of urban minorities. This led to the creation in 1967 of two presidential commissions, the

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57. 12 U.S.C. §1701s (1970). From the point of view of promoting greater locational choice and nonsegregated housing opportunities for low-income minorities, and providing for a mixture of families at various income levels in single apartment complexes, the rent supplement and leased housing programs offered considerably more flexibility than the regular public housing program. Achievement of these goals, however, depended on the response of private builders and owners, especially in the leased housing program. In some areas of the country, particularly in the South, it was found that entire apartment houses were being offered and new subdivisions constructed, for lease to local authorities. In a number of instances, these were occupied on a segregated basis. Additionally, because of cost limitations, housing in most white neighborhoods of large cities could not be secured for leasing to low-income tenants.

58. The Department of Housing and Urban Development Act of 1965, 42 U.S.C. §§ 3531 et seq. (1970).

59. The Veteran's Administration retained control of the VA home loan guarantee programs, as did the Department of Agriculture of the Farmers Home Administration program.

National Commission on Urban Problems,[60] better known as the Douglas Commission, and the President's Committee on Urban Housing, known as the Kaiser Commission.[61] Both were charged with seeking solutions to critical housing needs, particularly of the poor.

The dimension of the need found by the Douglas and Kaiser Commissions is staggering. As Anthony Downs, author of the housing chapter in Agenda for the Nation has stated:

> According to the official national goal, every American household which does not enjoy "a decent home and suitable living environment" is part of the housing problem. Unfortunately, this statement utterly fails to convey the appalling living conditions which give the housing problem such overriding urgency to millions of poor Americans. In fact, most Americans have no conception of the filth, degradation, squalor, overcrowding, personal danger, and insecurity which millions of inadequate housing units are causing in both our cities and rural areas. Thousands of infants are attacked by rats each year; hundreds die or become mentally retarded from eating lead paint that flakes off cracked walls; thousands more are ill because of unsanitary conditions resulting from jamming large families into a single room, continuing failure of landlords to repair plumbing or provide proper heat, and pitifully inadequate storage space.62

The Douglas Commission found that one of the most damning indictments against the public concern for housing in the Nation was the lack of realistic, reliable data about housing deterioration. The Commission warned against the common tendency to read into the census housing data more than is there:

> Visible condition of a building (which the census classifies as sound, deteriorating, and dilapidated) and plumbing facilities in combination are indeed... "one measure of housing quality," but only one--and

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60. National Commission on Urban Problems, Building The American City (Washington, D.C.: 1969).

61. The President's Committee on Urban Housing, A Decent Home (Washington, D.C.: 1968).

62. Ed. by Kermit Gordon (Washington, D.C.: Brookings Institution, 1968), pp. 141-42.

> a crude one at that. Quite surely it is on the conservative side--that is, it results in a lower estimate of the volume of substandard housing than most reasonable persons would arrive at on the basis of careful local studies. This seems doubly likely for housing in older, large, central cities and industrial suburbs of metropolitan areas. The census definition amounts to "a nearly weathertight box with pipes in it," and this notion of quality unfortunately, is hopelessly inadequate.63

Because of the "ridiculously inadequate data" at hand, the Commission found that, "personal guesses and far-fetched assumptions with little relation to the actual world around us clutter the housing and urban development field."[64] Calling on the Nation to direct a major effort towards the improvement of housing for the poor, the Douglas Commission found that the estimates based on the 1960 Census, of 11 million substandard and overcrowded units (16 percent of the Nation's total housing inventory) greatly understated the problem. They masked the critical aspect of inadequate urban housing, which was then and still is the concentration of substandard housing and of poor people. In analyzing the unprecedented achievement in improving housing quality since 1950, the Commission pointed out that the extent of the achievement depends on how available figures are read and the standards on which they are based. The achievements have been selective, largely bypassing the poor and minority groups.

Noting that the proportion of poor households in substandard housing is two to three times greater than the proportion for all households, depending on the measures used, the Douglas Commission again warned that, although the percentage of poor in substandard housing does not seem excessively high, it must be remembered that the figures do not refer to merely poor housing but only to the "rock bottom stratum of utterly unfit housing."[65] Poor renters pay

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63. Building The American City, p. 68.

64. Ibid., p. 68.

65. Ibid., p. 76.

considerably more of their income for housing than other income groups. Even if many poor families escape the worst housing, they still suffer "cruelly curtailed expenditures for other basic necessities such as food, clothing and medical care."[66]

In its findings published in 1969, the Kaiser Commission reached the fundamental conclusion that there are two distinct but inseparably interdependent problems: the immediate and critical need for millions of decent dwellings to shelter the Nation's lower-income families and the need to increase sharply the production of housing to stave off an impending serious shortage for the total population.[67] According to a study prepared for the Commission, the American economy would have to:

1. Build 13.4 million units for new young families forming between 1968 and 1978.

2. Replace or rehabilitate 8.7 million units that will deteriorate into substandard conditions.

3. Replace 3 million standard units that will be either accidentially destroyed or purposefully demolished for nonresidential uses, and

4. Build 1.6 million units to allow for enough vacancies for an increasingly mobile population.

Thus, the Kaiser Commission recommended a 10-year goal of producing at least 26 million new and rehabilitated housing units, including 6 to 8 million federally-subsidized units for families in need of housing assistance.[68]

The Housing and Urban Development Act of 1968

President Johnson recommended and Congress enacted the Kaiser Commission's recommendation as part of the Housing and Urban Development

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66. Ibid., p. 77.

67. A Decent Home (Washington, D.C.: U.S. Government Printing Office, 1969).

68. Ibid., pp. 39-50.

Act of 1968.[69] In calling for the production or rehabilitation of 26 million housing units by 1978, including 6 million for low- and moderate-income families, Congress for the first time specified a housing goal in terms of housing units to be produced and an established time frame for production.[70]

Enormous acceleration in housing production was obviously required to achieve these goals. Between 1950 and 1959 an average of 1.5 million new units were built each year, as opposed to the 2.6 million needed on a yearly average to meet 1968 Housing Act goals. Less than 60,000 subsidized units were produced each year, as opposed to the 600,000 needed as a yearly average between 1968 and 1978. HUD estimated that its annual budget for housing subsidy costs would have to increase to a peak of $2.8 billion in order to add 6 million units to the existing stock of subsidized housing.[71] A comparison of this multibillion dollar demand with other Federal expenditures helps place the budgetary impact in perspective. For fiscal years 1962 through 1967, $356.3 billion was spent for national defense, $33.2 billion for stabilizing farm prices and incomes, $24.2 billion for space exploration, and $22.2 billion for Federal highway construction. However, only $8.1 billion was budgeted for all housing subsidies.[72]

Alvin Schorr, director of the income maintenance project in the Department of Health, Education, and Welfare, quoted in a report of the Douglas Commission, points out that the Nation had already been investing heavily in housing but that the "lion's share" of the subsidy, through income-tax deductions, was going to the well-off. In 1962 the

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69. 82 Stat. 476 (codified in scattered sections of 5, 12, 15, 18, 20, 31, 38, 40, 42, 49 U.S.C. (1970)).

70. 42 U.S.C. §1441a (1970).

71. The Kaiser Commission estimated peak costs at $3.4 billion in 1978, when all units would be completed or near-ready for occupancy.

72. Urban America, Inc., The Ill-Housed (Washington, D.C.: undated), p. 13.

Government expended an estimated $820 million to subsidize housing for poor people (this figure includes public housing, public assistance, and savings because of income tax deductions). In the same year, the Federal Government spent an estimated $2.9 billion to subsidize housing for those with middle incomes or more. This sum includes only savings from income tax deductions--quite as effective a subsidy as a public assistance payment. It does not include the many housing-related Federal expenditures, such as grants for water and sewer lines, which made large developments of middle- and upper-income housing possible.

A recent analysis of the impact and equity of housing subsidy programs proposed in the Ford administration's fiscal year 1976 budget shows that:

1. The top 1 percent of the income distribution would receive 10 percent of all housing subsidies.

2. The lower half of the income distribution would receive only one-quarter of all housing subsidies.

3. More than two-thirds of subsidy recipients have incomes above $10,000.[73]

In 1973, tax subsidies were estimated at $7.9 billion. In 1976, they will be $11.3 billion. The $3.4 billion increase is almost $1 billion more than total outlays will be for low- and moderate-income housing in 1976. In 1973, the average tax subsidy received by families with incomes below $3,000 was $23; the average for families with incomes above $100,000 was $2,449.[74] Again in 1973, only 8 percent of new housing was available to the 29 percent of all families with incomes below $8,000.[75]

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73. Cushing Dolbeare, "Let's Correct the Inequities," ADA World (1975 Convention Issue, vol. 30, nos. 4 and 5, April-May 1975), p. 9. Dolbeare is executive secretary of the National Rural Housing Coalition.

74. Ibid., pp. 9 and 35.

75. Ibid., p. 35.

To meet the new lower-income housing goals, Congress created several new housing programs for low- and moderate-income families, and assigned additional funding for the public housing program. Section 235 of the Housing and Urban Development Act of 1968[76] created a homeownership program providing special mortgage insurance and cash payments to help lower-income home purchasers meet mortgage payments. Section 236[77] established a multifamily, rental housing program for moderate-income families to be produced and managed by private interests. Finally, Congress revamped a 1965 program for the development of new communities. The 1968 act provided an entirely new, community assistance program, by which the Federal Government guaranteed bonds and other obligations issued by private developers of an approved "new community," and included certain supplemental grants for public utilities and other facilities.[78]

Almost as soon as production began of large amounts of new housing under the section 235 and 236 programs, the Nixon administration began to question the equity and economic viability of these and other federally-subsidized housing programs. In January 1973, therefore, President Nixon issued a moratorium on all federally-subsidized housing programs, with the exception of section 23 leased housing. The President called upon HUD to perform an indepth study of the suspended programs in order that the administration might reassess the entire Federal involvement in subsidized housing production.[79]

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76. 12 U.S.C. §1715z-2 (1970).

77. 12 U.S.C. §§1715z-1 (a)-(m), (o) (1970); 1715z-1 (f), (g), (i), (n), (p) (Supp. IV, 1974).

78. 42 U.S.C. §§3901-3914 (1970).

79. See pages 57-60 for further discussion of the moratorium.

Based on HUD's findings, President Nixon proposed to continue the moratorium with the exception of the section 23 leased housing program, and 100,000 units of 235 and 236 housing for which commitments had been made prior to the moratorium.[80]

New Directions in Subsidized Housing

The administration believed that emphasis should be shifted from federally-subsidized construction to reliance on and encouragement of the private market, accompanied by a cash assistance program to lower-income families who are unable to pay market prices without assistance. A housing allowance program would, in the administration's view, provide the most equitable and least expensive means for accomplishing low- and moderate-income housing goals. HUD estimated that a program of this kind would cost between $8 and $11 million annually as opposed to the $34 billion annual expenditure that would be required to provide housing to all eligible families under the subsidized construction programs.[81]

The President proposed a modified program whereby developers would make newly-constructed units available to lower-income families at below-market rents. This program and an expanded section 23 leased program would both serve as testing grounds for certain aspects of a housing allowance concept, which HUD was already testing in a small experimental program.

Housing and Community Development Act of 1974

After considerable deliberation, Congress authorized a housing assistance payments program similar in principle to the one proposed by President Nixon. Under Title II, section 8 of the Housing and Community Development Act of 1974,[82] the Secretary of HUD is authorized

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80. Richard M. Nixon, Message to Congress, "Housing Policy" (Sept. 19, 1973), 9 Weekly Comp. of Presidential Documents (1973), p. 1141. The President proposed that the leased housing program be expanded from the existing 20,000 units to 100,000 units annually.

81. Housing and Development Reporter, vol. 1, no. 10 (Sept. 19, 1973), p. AA-3.

82. 88 Stat. 633 (1974), 42 U.S.C.A. §1437f (1975).

to make assistance payments on behalf of lower-income families occupying new, substantially rehabilitated, or existing rental units. The new program replaces the former section 23 leased housing program, which ended in December 1974. Payments can be made to owners who may be private owners, cooperatives, or public housing agencies. The new program does not provide financial assistance for construction or rehabilitation, the cost of which must be borne by the prospective developer or owner. The assistance payment is the difference between not less than 15 nor more than 25 percent of an eligible family's gross income and the maximum or fair market rent, as determined by HUD. Assistance payments may run for as many as 15 years for families in existing units, 20 years for families in substantially rehabilitated units, and 40 years for families in newly-constructed units.

It is anticipated that the new program will serve as a foundation for a national housing allowance plan, and several of its features are similar to those that would be found in such a plan. For example, the subsidy is tied to the needy family rather than the housing unit, as in the past. Tenants may find housing on their own and negotiate with the owner to contract for section 8 assistance. Tenants sign the leases and must pay their portion of the rent to the owner. Owners are responsible for maintenance and repairs and assuring full occupancy of the housing.

Other features of the section 8 program represent significant departures from previous federally-assisted housing programs. One such feature is the broadening of income eligibility limits so that families with a wide range of incomes are eligible to participate in one federally-assisted housing program.[83] In the past, the traditional public housing program served families with the lowest incomes and FHA-subsidized programs such as sections 235 and 236 primarily served

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83. In the section 8 program, lower-income families with incomes less than 80 percent of median income in the area are eligible for assistance.

families in the moderate-income range.[84] Congress was concerned that a broad economic mix be achieved in multifamily projects in which families who receive section 8 assistance live. To assure that low-income families will receive assistance, as opposed to only moderate-income, Congress required that 30 percent of all families served must have incomes below 50 percent of the median income in the area.

A second feature of the new program provides that resources will be made available to meet increases in operating costs, thereby eliminating the problem encountered in the 236 program in which operating costs in many projects have exceeded the rent-paying ability of tenants and placed such projects in severe financial crisis. In the section 8 program, tenants will never pay more than 25 percent of their gross income,[85] regardless of increases in operating costs. Thus, section 8 provides a deeper subsidy than any previous Federal lower-income housing program.

Under section 8, tenants are required to pay at least 15 percent of their gross income. The minimum rent requirement curtails section 213(a)[86] of the Housing Act of 1969,[87] which provided for the establishment of rent-income ratios that assumed some families had no income available for housing expenses. Under the new law, all families must pay something towards rent.

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84. Income limits for admission to 235 and 236 housing can be high as 135 percent of public housing income limits for the area. Subsidies available in these 2 programs are not deep enough to serve most low-income families. Housing In The Seventies, pp. 85 and 98.

85. In determining the percentage of income to be paid, consideration can be given to the number of children, the level of income, and the extent of medical and other expenses. 88 Stat. 633, Title II, sec. 8(c)(3) (1974).

86. 42 U.S.C. §1402(1) (Supp. III, 1973). This section is familiarly known as the Brooke Amendment.

87. 83 Stat. 379 (codified in scattered sections of 12, 15, 20, 40, 42 U.S.C. (1970)).

Under the 1974 act, opportunities for lower-income homeownership are to be provided through the section 8 program[88] as well as the conventional public housing program. Congress did not specify how the homeownership provisions should be carried out, however, and HUD has not implemented these provisions of the act.

An important feature of the section 8 program is that it can be used along with other HUD programs to finance housing construction. Thus Congress provided that a qualified sponsor can use the section 202 program for housing for the elderly to finance construction and the section 8 program to subsidize rentals.[89]

Finally, the most important feature of the section 8 program, from the point of view of facilitating integrated housing, makes it possible for HUD to provide assistance to families in both urban and rural jurisdictions that do not have local housing agencies or that are unwilling to utilize the section 8 program. Thus, the approval of the locality is not a prerequisite to the provision of section 8 assistance, as in the public housing and rent supplement programs.

With the funding levels authorized by Congress, original estimates placed the number of units to be provided under section 8 at 400,000 annually for fiscal years 1975 and 1976. In its 1976

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88. 42 U.S.C.A. §1437f(c)(8) (1975).

89. See HUD Construction Loans for Housing for the Elderly and Handicapped, 40 Fed. Reg. 36536-43 (1975). For Fiscal Year 1976 $375 million is provided for the section 202 program. P.L. 94-116.

budget, however, HUD has lowered its target to 200,000 units in fiscal 1975 and has asked for funds to provide 400,000 units originally targeted under section 8 for fiscal year 1976.

Because a number of congressional representatives were skeptical of the reliance placed by the administration on an essentially untried mechanism, the 1974 act also authorizes funds for the construction of conventional public housing units and for a limited number of units under the 235 and 236 programs.[90] It was felt that these programs might be needed to provide housing in localities in which the section 8 housing program may not work properly.

HUD estimates that 78,000 units of new public housing will be constructed under the 1974 congressional authorization. More significant than the number of units to be provided are changes in the basic public housing law that Congress has authorized. Public housing is no longer restricted to families at the lowest income levels, those who could pay rents no higher than 20 percent below rents on the private market. Under the new law, income eligibility requirements are the same as in the section 8 program. Continued-occupancy income limits are removed so that a family whose income goes above a certain level need no longer move out of public housing. Both of these changes were made to foster economic mix in public housing projects.

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90. 88 Stat. 633, Title II, sec. 211-212 (1974). These programs are extended for only 1 year. Despite the intent of Congress, HUD provides funding in its 1976 budget for only 3,250 new units of 236 housing for which commitments were made before the January 1973 moratorium. No funds are provided for additional 235 housing. BNA Housing and Development Reporter, Current Developments, vol. 2, p. 928.

Tenants in public housing are required under the new law to pay the higher of two amounts figured either as 25 percent of adjusted income[91] or 5 percent of gross income, or that amount of the welfare payment specifically designated for shelter. Local housing authorities are required to establish satisfactory procedures to assure, among other things, prompt payment and collection of rent and prompt eviction in the case of nonpayment.

The 1974 act also provides for the extension of rural housing programs,[92] several new features of which improve upon past Farmers Home Administration (FmHA) programs. For example, FmHA may now operate in communities with populations up to 20,000 that are located outside metropolitan areas and in which a serious lack of mortgage credit exists. Inclusion of a rent supplement program in FmHA rental, farm labor, and cooperative housing means that FmHA housing benefits can be made available to more low-income families. In an effort to provide more housing in rural areas, Congress changed the old FmHA program to permit State and local housing agencies to participate in any of the FmHA programs, in addition to developing public housing or housing to be made available through section 8 assistance.

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91. 42 U.S.C.A. §1437a (1975). Deductions are made from gross income for a minor or student's income, dependents who are disabled or full-time students, nonrecurring income, extraordinary medical and other expenses, and the like.

92. 88 Stat. 633, Title V (1974).

For poorly-housed Native Americans living on reservations, the new act is significant in that, for the first time, a specific authorization is set aside for Indian housing (at least $30 million for fiscal years 1975 and 1976).[93] The 1974 act makes Indian tribes and groups specifically eligible to receive community development block grants[94] and provides them greater access to FmHA programs, by enabling tribal housing authorities to become sponsors of FmHA rural rental housing.[95] Thus, the new act enlarges and diversifies tribal housing programs.[96]

The Housing and Community Development Act of 1974 for the first time ties the provision of community development funds to the provision of lower-income housing by requiring each locality to submit a housing assistance plan as part of its community development block grant application.[97] To receive community development funding, a locality must address its need for lower-income housing. It must take into consideration not only those lower-income families who presently reside in the locality, but also those who might be expected to reside there, based on current and projected employment, and other factors. In the housing assistance plans, the general location of proposed federally-assisted housing must be indicated. Localities must aim at reducing spatial concentrations of low-income families and promoting economic diversity of residents in neighborhoods selected for redevelopment.

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93. 88 Stat. 633, Title II, sec. 5(c) (1974).

94. 88 Stat. 633, Title II, sec. 102(a)(1) (1974).

95. 88 Stat. 633, Title V (1974).

96. Housing Assistance Council, "Toward an Indian Housing Delivery System," p. 7. Under 42 U.S.C. §1471(a)(2) (1970) FmHA can make loans to individuals with leasehold interests in nonfarm rural land. Leasehold land is one form of Indian land status.

97. 88 Stat. 633, Title I, sec. 104(a)(4) (1974).

Because so many aspects of the most recent housing and community development block grant program are new, it is difficult to assess how successful it will be in meeting the needs of lower-income families. It is clear, however, that Congress has abandoned the 1968 housing production goals, despite their reiteration in the 1974 Housing and Community Development Act.[98] At the currently anticipated level of funding for fiscal years 1975 and 1976, fewer than 800,000 units of lower-income housing will be made available. Given the shortfalls in housing starts during the years from 1968 to 1974, many more units of housing would be needed each year between now and 1978, were the goal of 6 million low- and moderate-income units to be achieved. Rising inflation is undoubtedly causing an increase in the number of families in need of assistance. Thus, as Arthur P. Solomon, associate professor at Massachusetts Institute of Technology and author of Housing The Urban Poor[99] has indicated, the $3.4 billion housing authorization is too small to have a significant impact on the 73.1 million families that live in poor quality, overcrowded housing or pay excessive rent.

Despite the need, the United States continues to spend the smallest percentage of its gross national product (GNP) for direct housing subsidies of any western industrialized nation.[100] Without doubt, the United States has abandoned the commitment made in 1968 to meet lower-income housing needs within the current decade.

LEGISLATION TO ASSURE EQUAL HOUSING OPPORTUNITIES

Since the latter part of the 19th century, Federal law has been in existence that requires equality of housing opportunity for all American citizens. Until 1962, however, the Federal housing agencies and the

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98. 88 Stat. 633, Title VIII, sec. 801 (1974).

99. Boston: Massachusetts Institute of Technology Press, 1974.

100. According to Arthur Solomon, the United States spends 3.2 percent of its GNP; France, 6.9 percent; Belguim, 5.7 percent; West Germany, 5.4 percent.

majority of State governments either openly endorsed or ignored discriminatory practices of private housing interests which acted in direct opposition to these laws. As the Nation entered the decade of the 1960's, the impetus of the burgeoning civil rights movement brought the issue of discrimination in housing to the forefront. Indeed, within the short period of 12 years, the long tradition of restricting the access of minorities and women to housing was denied all legal and administrative support by the Federal Government and most State governments.

Executive Order 11063

In attempting to shed the legacy of discrimination in housing and prevent its perpetuation, the Federal Government first took a piecemeal approach to the revival of the guarantees of the 14th amendment and the Civil Rights Act of 1866 by banning discrimination in some types of housing but not others.

Under Executive Order 11063,[101] issued in November 1962, a broad intent was stated to prevent discrimination because of race, color, creed, or national origin in all housing financed through Federal assistance.[102] In the preamble to the Executive order, President Kennedy pointed to the problem of discrimination and the effect it had in denying to "many Americans" the benefit of federally-assisted housing, thus confining them to substandard, unsafe, unsanitary, and overcrowded housing. Citing the goal established by Congress in the 1949 Housing Act, the President alluded to the impossibility of achieving a "decent home in a suitable living environment for every American family" as long as discrimination persists.

Although the order was couched in broad terms, it was, in fact, limited in scope. It covered only housing provided through mortgage

101. 3 CFR 1959-1963 Comp., p. 652.

102. Id., §101.

insurance by FHA or loan guarantees by VA and federally-assisted public housing. Conventionally-financed housing (non-FHA or VA) financed by mortgage lending institutions, representing the great bulk of the Nation's housing supply, was excluded from coverage. Furthermore, the principal content of the order related almost entirely to housing provided through Federal aid agreements executed after November 20, 1962.

Builders and owners of housing could be subject to disbarment from further participation in Federal programs, if found to discriminate. With respect to owners of existing housing that previously had received Federal assistance or that was still receiving such assistance, the order provided only for the exercise of "good offices" by Federal administrative personnel, who were to attempt to bring violators into compliance with the order.

Title VI of the Civil Rights Act of 1964

Overall, Executive Order 11063 had only minor impact in assuring equal opportunity in housing provided through FHA, VA, and public housing programs. In 1964, therefore, Congress took a second step to redress racial discrimination in federally-assisted housing and other Government programs, spurred into action by the growing protests of the civil rights movement and by such events as the massive March on Washington in August 1963. With enactment of Title VI of the Civil Rights Act of 1964,[103] discrimination was prohibited on the basis of race, color, or national origin against persons who were eligible to participate in and receive the benefits of any program receiving Federal financial assistance.[104]

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103. 42 U.S.C. §§2000d et seq. (1970).

104. 42 U.S.C. §2000d (1970).

Title VI filled in some of the gaps in coverage of federally-assisted housing left open by Executive Order 11063. For example, all housing in urban renewal areas was made subject to the provisions of Title VI, as well as all public housing, regardless of the date of contract for assistance, as long as Federal financial contributions were still being received for the operation of a public housing program. However, housing provided through FHA mortgage insurance and VA loan guarantee programs outside urban renewal areas, as well as the Farmers Home Administration housing, was exempted from coverage,[105] a mark of the considerable power exercised by private housing interests on Capitol Hill. Likewise, conventionally-financed housing was not affected unless it was located in urban renewal areas.

Title VIII of the Civil Rights Act of 1968

In the same year as the passage of the landmark Housing and Urban Development Act of 1968, which established specific goals for the production and rehabilitation of housing, Congress once again focused on the need to expand Federal law to prevent discrimination in housing. In Title VIII of the Civil Rights Act of 1968,[106] Congress made its intentions clear by declaring that "/i/t is the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States."[107] Two months after passage of Title VIII, the Supreme Court brought its weight to bear in support of this policy through the majority opinion in Jones v. Alfred H. Mayer, Co.[108] Thus, judicial and legislative processes combined to form extensive and definitive national policy in the housing field, which provided a clear-cut commitment to equal housing opportunities for all.

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105. Under Section 602 of Title VI, Federal departments and agencies which extend Federal financial assistance by way of grant, loan, or contract other than a contract of insurance or guaranty are directed to implement the provisions of Section 601. 42 U.S.C. §2000d-1 (1970).

106. 42 U.S.C. §§3601-3619, 3631 (1970).

107. 42 U.S.C. §3601 (1970).

108. 392 U.S. 409 (1968).

Title VIII prohibits discrimination in the sale or rental of all housing, federally-assisted and nonassisted, except:

> 1) single family homes sold or rented without use of a broker and without publication, posting or mailing of any advertisement "that indicates any preference, limitation, or discrimination based on race, color, religion, or national origin, or an intention to make any such preference, limitation, or discrimination." 109
>
> 2) dwellings providing units or rooms for up to four families living independently of each other, and in one unit of which the owner resides.[110]

Title VIII became fully effective on January 1, 1970, at which time more than 80 percent of all housing came under its coverage. The following specific discriminatory acts are prohibited:[111]

1) To refuse, after a bonafide offer is made, to negotiate on a sale or rent, or to otherwise deny a dwelling to any person because of race, color, religion, or national origin.

2) To discriminate in the terms, conditions or privileges of a sale or lease or in providing services or facilities in connection with a sale or lease.

3) To make, print, or publish (or cause to be made, printed, or published) any notice, statement or advertisement that indicates preferences or limitations based on race, etc.

4) To represent to any person because of race, etc., that a dwelling is not available, when in fact it is.

5) To induce or attempt to induce any person to sell or rent any dwelling by telling them that persons of a particular race, etc., are moving into the neighborhood.

6) To deny because of race, etc. a loan or other financial assistance to any person applying for such assistance for the purpose of purchasing, constructing, improving, repairing or maintaining a dwelling.

7) To deny any person because of race, etc., access to or membership or participation in multi-listing services, real estate organizations or other services relating to the business of selling or renting dwellings.

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109. 42 U.S.C. §3603(b) and (c) (1970).

110. Id.

111. 42 U.S.C. §§3604-3606 (1970).

The Housing and Community Development Act of 1974 amends Title VIII by prohibiting discrimination in the sale or rental of housing on the basis of sex.[112] In addition, the 1974 act provides that federally-related mortgage loans or Federal insurance, guarantees, or other assistance cannot be denied to any person on account of sex and that the combined income of both husband and wife must be considered for the purpose of extending mortgage credit in the form of a federally-related mortgage loan to a married couple or either member thereof.[113]

Persons who believe they have been the victims of discrimination in housing may file a complaint with HUD,[114] which is the agency responsible for administration of Title VIII, or, after having exhausted HUD's complaint procedure, they may file a civil action in the proper Federal district court or State or local courts of general jurisdiction.[115]

In the enforcement of Title VIII, HUD's powers are limited to the receipt, investigation, and conciliation of complaints.[116] If HUD is unable to resolve a complaint, HUD may refer the matter to the Department of Justice for further action.[117] HUD is not empowered to request a temporary or permanent injunction or restraining order against the person or persons accused of discriminatory action.

Title VIII authorizes the Attorney General to bring a civil action in a Federal district court against any person or group of persons who are believed to be engaged in a pattern or practice of resistance to the

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112. 88 Stat. 633, Title VIII, sec. 808(b) (1974).

113. 88 Stat. 633, Title VIII, sec. 808(a) (1974).

114. 42 U.S.C. §3610(a) (1970).

115. 42 U.S.C. §3610(d) (1970).

116. 42 U.S.C. §§3610, 3611(a) (1970). With respect to federally-assisted housing, HUD's enforcement powers under Title VIII are far weaker than those provided by Title VI of the Civil Rights Act of 1964 and Executive Order 11063, both of which provide for the ultimate sanction of withdrawal of Federal financial assistance (see 42 U.S.C. §2000d-1 (1970); Exec. Order No. 11063, §302(a) and (b), 3 C.F.R. 654 (1959-1963 Comp.).

117. 42 U.S.C. §3611(g) (1970).

rights granted by Title VIII, or if any group of persons are believed to have been denied these rights and the denial raises an issue of general public importance.[118] The Attorney General may apply for a permanent or temporary injunction, restraining order, or other order against those responsible for such pattern or practice or denial of rights.[119]

In vesting responsibility for the administration of Title VIII with the Secretary of HUD, Congress provided for an additional Assistant Secretary in HUD, to whom the Secretary could delegate Title VIII enforcement functions.[120] In addition, the Secretary of HUD as well as all executive departments and agencies were required to "administer their programs and activities relating to housing and urban development in a manner affirmatively to further the policies" of Title VIII.[121]

FEDERAL ADMINISTRATION OF HOUSING AND CIVIL RIGHTS LAWS

HOUSING PROGRAMS

Because of the extensive nature of its involvement in housing and community development, the Federal Government has been the single most influential entity shaping urban growth in America. It, therefore, has also been most influential in creating and maintaining urban residential segregation.

Early Administration of Mortgage Insurance and Loan Programs

For nearly 30 years after the first Federal housing programs were initiated, the Federal Government either actively or passively promoted racial and ethnic discrimination in housing. For 15 years, for example, the FHA Underwriting Manual warned of the infiltration of "inharmonious

118. 42 U.S.C. §3613 (1970).

119. Id.

120. 82 Stat. 84 §808(b) and (c) (1968).

121. 42 U.S.C. §3608(c) (1970).

racial groups"[122] into neighborhoods occupied by families of a different race. FHA actively promoted the use of a model racially-restrictive covenant by builders and owners whose properties would receive FHA insurance.[123] This policy was in full effect during the first 5 years of the building boom after the Second World War, when over 900,000 units of FHA housing were produced. VA administrative policies with respect to segregation closely paralleled those of FHA.

FHA and VA housing for the most part has benefitted moderate- to middle-income families.[124] Thus, many minorities have not been eligible for FHA mortgage insurance or VA loan guarantees simply on the basis of income.[125] Moreover, until very recently homeownership opportunity for minorities at virtually all income levels has been restricted to older housing. Older housing frequently has failed to meet minimum FHA and VA construction requirements and, therefore, has not been eligible for FHA insurance or VA loan guarantees.[126]

In December 1949, FHA and VA reversed the policy of promoting racial segregation in housing, acting upon the 1948 decision in Shelley v. Kraemer, which prohibits judicial enforcement of restrictive covenants. FHA and VA ruled that they would not provide mortgage insurance for property on which restrictive covenants were recorded after February 15, 1950.[127] In 1951, FHA announced that all repossessed, FHA-insured housing would be administered and sold on a nonsegregated basis.[128]

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122. Sec. 980 (1938).

123. Understanding Fair Housing, p. 5.

124. Paul F. Wendt, Housing Policy - The Search for Solutions (Los Angeles: University of California Press, 1962) pp. 208-09.

125. See poverty level income data in footnote 18, p. 8.

126. Wendt, Housing Policy, p. 209.

127. Federal Housing Administration, Underwriting Manual, sec. 303 (Dec. 1949).

128. Housing, p. 25.

These changes had little real effect in increasing minority participation in FHA and VA programs on an integrated basis. "As late as 1959, it was estimated that less than 2 percent of the FHA-insured housing built in the post-war housing boom had been made available to minorities."[129] The intent to promote minority housing opportunities was not matched by action to prevent builders and owners who participated in federally-sponsored programs from behaving much as they had in the past.

The policies of the four Federal financial regulatory agencies[130] charged with responsibility for the supervision and regulation of mortgage lenders also endorsed overt racial and ethnic discrimination in mortgage lending until passage of the 1968 Fair Housing Law. Mortgage lenders were left free to consider minorities as less desirable risks than whites, regardless of the minority applicant's personal or financial worth. They routinely refused to provide minorities mortgages for homes in nonminority areas. These practices were stoutly defended as essential elements of prudent banking by lenders and regulatory agency personnel alike.[131]

Until very recently, Federal policies also actively endorsed traditional mortgage-lending criteria that virtually require discrimination against women, either as individual homeseekers, as heads of

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129. Understanding Fair Housing, p. 5.

130. The Board of Governors of the Federal Reserve System regulates all national banks, as well as banks that are voluntary members of the FRS, by setting monetary, credit, and operating policies for system as a whole. The Federal Deposit Insurance Corporation provides insurance for bank deposits. The Office of the Comptroller of the Currency charters and supervises national banks. The Federal Home Loan Bank Board supervises savings and loan associations and savings banks.

131. Mortgage Money, p. 33.

families, or as contributors to the amount of family income on which mortgage lenders base a determination of mortgage applicant eligibility for FHA mortgage insurance or VA loan assistance.[132] Thus, whether single or married, women have frequently faced insurmountable obstacles in obtaining mortgage credit.

If a woman is married and working, her income has automatically been discounted in the process of determining the family's eligibility for a mortgage. No matter how important her income is to the family budget, it has been considered "secondary" for mortgage lending purposes. It is the husband's financial status that has determined the family's chances for a mortgage loan.[133] This has occurred despite the fact that the working wife's income has become increasingly important as a substantial and continuing part of a family's assets.[134]

The practice of discounting all or a part of the wife's income has prevented many families from buying homes. Such families have often been compelled to accept housing that does not suit their needs and incomes. The practice has arisen from the fallacious assumption that a married woman's participation in the labor force is a temporary aberration; once she becomes pregnant, her employment will end abruptly and permanently. This assumption is based on myth that has ignored changing social conditions, such as the increased employment of women and the availability of liberal maternity leave policies.[135]

For the minority family, the routine discounting or total ignoring of the wife's income has worked a special hardship and placed minority women and their families in double jeopardy.[136] A far smaller

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132. Ibid., pp. 18-29.

133. Ibid., pp. 18-20.

134. As of 1970, in two of every five families, with husband and wife both present, both the husband and wife worked.

135. Steven M. Rohde, "Ending Sexism in the Mortgage Market" (paper presented at the National President's Meeting sponsored by the National Council of Negro Women, Sept. 14, 1974), p. 3.

136. Mortgage Money, p. 34.

percentage of minority families have had sufficient incomes provided solely or largely by the husband that have made them eligible for mortgage loans. As of 1970, among black families in which only the husband worked, family income was only two-thirds of white family income. For black families in which both husband and wife worked, family income was 90 percent of the income of white families.[137] Thus, in many black families, the addition of the wife's income has been crucial to bringing the family within a income level sufficient to permit the assumption of a home mortgage.

The widespread practice of discounting the wife's income has been shown by a 1971 Federal Home Loan Bank Board (FHLBB) survey of savings and loan institutions. Savings and loan managers were asked what credit they would allow for a working wife's income if she were 25 years old, had two school age children, and worked full time as a secretary. In response, 25 percent of the managers said they would count none of her income and the majority stated they would count 50 percent or less. Only 22 percent stated that her income would receive full credit.[138] Another study released in May 1972 by the United States Savings and Loan League showed that, of more than 400 large savings and loans, only 28 percent indicated they would give full credit to a working wife's income.[139]

Discounting practices have not been justified by economic evidence. Most major studies on mortgage risk have found that the key factors in determining default risk relate to the characteristics of the loan itself, particularly the loan to value ratio, rather than to the characteristics of the borrower. In fact, a 1964 study on mortgage delinquency rates in two-wage-earner and single-wage-earner families

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137. Ibid., p. 20.

138. Rohde, "Ending Sexism," p. 2.

139. Ibid., p. 4. See also Utah Advisory Committee to the U.S. Commission on Civil Rights, Credit Availability to Women in Utah (1975).

showed that, if anything, families in which the husband was the only wage earner had a slightly greater likelihood of being delinquent in making payments than loans to families in which the husband's income was only a portion of the family income.[140]

Single women whether unmarried, widowed, separated, or divorced have been viewed with great skepticism under traditional mortgage lending criteria. The U.S. Commission on Civil Rights has found that regardless of their professional background or work experience, their status as women who are not part of a male-headed household traditionally has rendered them suspect credit risks.[141]

The FHA underwriting manual endorses this bias in its emphasis on the married mortgagor, whom FHA believes to be more stable than the single mortgagor. It is assumed that, because the married mortgager has greater responsibilities, he or she will be more likely to fulfill his or her obligations.[142] In the FHLBB survey, it was found that 64 percent of the savings and loan managers use marital status as a factor in assessing applications for loans. Eighteen percent indicated that marital status, in and of itself, could be the determining factor in disqualification for a loan.[143] Although single men as well as women have been at a disadvantage in obtaining a mortgage, the disadvantage has been greater for women. Women are a significant percentage of the persons in the unmarried, widowed, separated, and divorced categories of persons who seek mortgage loans.[144] In addition, single women must present a stronger credit and income status than single men, and single women are more closely scrutinized at every step of the mortgage application process.[145]

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140. Rohde, "Ending Sexism," p. 4.

141. Mortgage Money, p. 26.

142. U.S., Department of Housing and Urban Development, credit analysis for Mortgage Insurance on One to Four Family Properties (Handbook 4155, July 1972), chap. 2, sec. 2-7a.

143. Rohde, "Ending Sexism," p. 4.

144. Ibid., p. 5.

145. Mortgage Money, pp. 26-27.

The myth generating this treatment of single women characterizes women as inherently unreliable, incapable of conducting their own affairs, and in need of the protection of a husband or father. The lending industry translated the myth into a reluctance to grant a woman a mortgage loan outright or a requirement for an assumption or a male cosigner. [146]

As in the case of the married woman whose income has been discounted, there is no supportable rationale for discrimination based on marital status. To the contrary, no demonstrable relationship has been shown between marital status and mortgage loan risk. [147] This evidence suggests that a single woman who is employed and who desires to purchase a home is unlikely to quit work during the early years of the mortgage, the crucial period for default. If her marital status changes, it is likely that the income of her family will actually increase. [148]

Until very recently, only FHA's mortgage lending policy ran counter to the practice of systematic housing discrimination on the basis of sex. FHA revised its policies during the 1960's to encourage inclusion of the wife's full income in determination of income eligibility for FHA-insured mortgage loans. Data relating to accepted applications indicates that, in most cases where there is a working wife, her full income has been counted. [149]

Early Administration of Public Housing

In the public housing program, early Federal administrative policy with respect to participation of minorities differed somewhat from policies followed in the other Federal housing programs. From the outset,

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146. Ibid., p. 27. Assumptions are a safety device wherein ultimate responsibility rests with the original mortgagor. The second mortgagor assumes payments of the original loan.

147. Rohde, "Ending Sexism," p. 5.

148. Ibid., p. 5.

149. Ibid., p. 3.

there was a desire to provide low-rent housing to poor minorities as well as to whites. Local public housing authorities (LHA's) were permitted to enforce either "separate but equal" or "open occupancy" policies.[150] Most LHA's chose the former.[151] Under the separate but equal policy, LHA's assessed the need for low-rent housing separately for minorities and whites and provided housing according to the relative needs on a segregated basis.[152]

However, the requirement that the public housing program be administered to promote economy[153] limited the extent to which racial equity actually operated in assessing need. As a result, only those who were able to pay some rent were served. Because a larger proportion of poor minorities than of poor whites were at the lowest income levels, with little or no resources available for rent, public housing under the racial equity policy actually met the need of a smaller proportion of the low-income minority population. This factor contributed to the development of a substantial backlog of need for public housing among low-income minority families.

The provisions of public housing on a racially segregated basis continued with Public Housing Administration (PHA) approval through

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150. U.S., Commission on Civil Rights, Report of the U.S. Commission on Civil Rights (Washington, D.C.: 1959), p. 474.

151. Ibid., p. 474. New York forbade discrimination in public housing in 1939, Massachusetts in 1948, Connecticut and Wisconsin in 1949. Several other States followed in later years. By 1961, 32 States operated public housing on an open occupancy basis, and 17 States and numerous localities had antidiscrimination housing laws that applied to publicly-assisted as well as other types of housing.

152. Assessing need on a racial equity basis first became the official policy of PHA in 1951 (Public Housing Administration, Housing and Home Finance Agency, Low-Rent Housing Manual, Section 102.1, Feb. 21, 1951).

153. 42 U.S.C. §1402(1) (1970).

the 1950's and into the 1960's, despite a growing trend among States and localities to adopt laws prohibiting discrimination in public housing and despite several significant court decisions that found State-enforced segregation in public housing unconstitutional.[154] In communities covered by open occupancy laws, on the other hand, patterns of integration began to emerge in some public housing projects. By 1960, of 886 public housing projects, 492 had mixed-occupancy patterns. Frequently, however, mixed occupancy meant that a few minority families lived in otherwise all-white projects or vice versa.[155]

In most localities, racial segregation in public housing was also enforced through the selection of locations for the construction of low-income housing. LHA's selected, and the Public Housing Administration approved, separate locations for the units to be occupied by white and minority families. Also with Federal approval, LHA's created separate management offices for projects occupied by whites and blacks and separate waiting lists based on race. In some localities, the policies pursued by LHA's, with the Government's blessing, actually created segregated residential patterns and concentrations of minority poor where they had not existed before. In virtually all metropolitan areas, the location of public housing accentuated the concentration of minority groups in central cities. Local opposition to the construction of public housing in more desirable locations assured this result.

Similarly, in a number of cities, per-unit cost limitations resulted in the construction of gigantic public housing projects containing hundreds of units to house the poor. In such cases, although the intent

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154. Detroit Housing Commission v. Lewis, 226 F.2d 180 (6th Cir. 1955); Heyward v. Public Housing Administration, 238 F. 2d 689 (5th Cir. 1956).

155. Housing, p. 112. In Detroit, for example, five projects were recorded as "completely integrated" but two of the five were less than 4 percent minority and another project was 91.8 percent minority.

was obstensibly to provide decent housing in clean, attractive living environments, quite the opposite result was achieved. The problems in managing poorly planned and constructed, densely populated, and inadequately serviced projects have become so great that many have deteriorated to an uninhabitable state. In St. Louis, Pruitt-Igoe, a public housing venture on urban renewal land, deteriorated so badly that the Federal Government in 1970, to reduce the number of units, demolished large portions of the high-rise structures.

Although PHA had no mandatory site selection requirements prior to 1964, Federal program administrators were cognizant of the problems of increased residential segregation and concentration of lower-income minorities resulting from LHA site selection policies. PHA discouraged site selection in minority neighborhoods and towards the end of the 1950's began to encourage the dispersal of smaller public housing projects in different areas of a given community. However, PHA's efforts were frequently stymied by local opposition to public housing construction on any sites other than those created by clearing slums in which racial minority groups resided, or sites that were available in other minority areas in a locality.

Early LHA management policies often adversely affected low-income women as well who were heads of families in which one or more children were borne out of wedlock. Endorsing the moral contempt in which society has traditionally held women with illegitimate children, LHA's usually refused to rent to them, thereby depriving housing to families who often had the greatest need. This practice was not questioned until the latter half of the 1960's when several courts ruled against it as contrary to the 14th amendment. In 1968, HUD issued new regulations [156] on admission and continued occupancy in public housing which prohibited LHA's from automatically denying admission or continued occupancy to "a particular class" such as unmarried mothers or families having children born out of wedlock.

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156. U.S., Department of Housing and Urban Development, "Admission and Continued Occupancy Regulations for Low-Rent Public Housing" (Circular of Dec. 17, 1968) contained in HUD Circular HM 7465.12 (June 2, 1971).

Early Administration of Rural Housing Assistance Programs

To the extent that Farmers Home Administration (FmHA) programs have assisted in improving rural housing conditions, the benefits have been extended on a racially disproportionate basis. A 1965 study by the U.S. Commission on Civil Rights found that, while blacks in 13 southern rural counties were receiving an equal or somewhat greater percentage of FmHA loans, individual loan amounts were much larger for whites. Poorer whites received more financial assistance than blacks at the same income level,[157] and a much greater proportion of whites received assistance for the purchase of farms, the purchase of rural nonfarm housing, and improvement of farm or nonfarm housing. For each successively lower economic class of black borrowers, FmHA assistance went heavily to living expenses and annual operating costs.

Inequitable administration of Federal rural housing assistance as well as other Federal agricultural programs have played a role in heightening the disparity between white and black farmers and hastening the exodus of southern rural blacks from the land. Over the years, the prevailing FmHA policy was to follow local discriminatory practices and, thus, to perpetuate a double standard with its injurious effects on rural minorities.

Administration of Federal Community Development Programs

Other Federal programs initiated during the 1950's adversely affected minority housing opportunities while benefiting the white majority. Of these, urban redevelopment--later called urban renewal--has played a substantial role in divesting blacks and other minorities of housing and causing massive shifts of minority population from areas to be redeveloped to nearby neighborhoods. Frequently these neighborhoods have become the new ghettos. Overcrowding, lack of adequate public facilities, and dwindling investments by banks and private owners in the sale and maintenance of housing in these neighborhoods have resulted

157. Equal Opportunity in Farm Programs, pp. 72-73.

in the creation of new blighted areas, much like those the local urban renewal program had aimed to eliminate.

Morton Shussheim, author of "Housing In Perspective," found that during roughly the first decade of urban renewal, "more than 60 percent of the families displaced were blacks, although blacks numbered less than a third of the total city populations involved. Through June 1965, reconstruction of urban renewal land was mainly for institutional and public purposes (27 percent), and housing (36 percent), and prior to 1963, most of the new housing was for upper middle-income occupancy." [158]

In the latter half of the 1950's and early 1960's, as the civil rights movement gathered momentum, one of the targets was slum clearance, which had come to be known as synonymous with "Negro removal." Increasingly, blacks objected to the arbitrary use of public power for the benefit of others. All too frequently urban renewal resulted in crosstown expressways, high-cost housing, university expansions, and other improvements in which blacks, and in some instances other minorities, had no share.

Despite the new approaches provided in later years, urban renewal has continued to have an adverse impact on minority interests in many communities. A large part of this problem has stemmed from the unwillingness or inability of Federal administrators to enforce the requirements of the program. Another factor is the nature of the requirements themselves, as well as local resistance to the type of planning that would assure equal housing opportunity for minorities in the urban renewal process. [159]

From the late 1950's to the present, federally-assisted highway construction, like urban renewal, has caused massive displacement of nonwhites in central cities and has destroyed some older black enclaves

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158. The Public Interest, no. 19, Spring 1970, p. 27.

159. As of 1959, only 33 percent of new construction under sec. 221 had been occupied by certified displacees, while 56 percent of rehabilitated housing had gone to displacees. Because whites as well as blacks were displaced, the proportions of minority participation in the 221 program were lower than the foregoing figures. In a number of cities with 221 programs, blacks could find 221 housing only in predominantly or all-black neighborhoods. Pittsburgh is a notable exception. Housing, pp. 95-99.

in suburban areas. Until passage of the Uniform Relocation Act of 1970,[160] the Federal highway program imposed no requirement on either the Federal Government or States to consider the impact of highway location plans on minority communities or to provide relocation housing and monetary assistance to displacees to defray moving costs.

The impact of highway construction, however, has extended far beyond displacement. New highways have led to the movement of job opportunities, which in turn causes changes in residential patterns. Highways separate one area of the city from another and in some instances have isolated minority neighborhoods from the mainstream of community life. The construction of federally-assisted highways has dominated the timing and location of suburban residential development, creating urban land where none existed by extending the commuting distance from existing cities.[161] As the Douglas Commission pointed out in 1968, "the low density pattern found in most of the Nation's areas would never have been possible without the effect of high-speed highways in reducing the importance of compact urban development."[162] Because of racial discrimination in housing and the exclusion of low- and moderate-income housing from new growth suburban areas, the direct benefits of the suburban housing and commercial development sparked by highway construction have been largely restricted to white populations.

Administration of Housing Programs on Native American Reservations

The Federal Government first became involved in a special program to provide housing for Native Americans in 1961 when the Public Housing Administration authorized the establishment of tribal housing authorities, thereby allowing for the construction of public housing on Indian

160. 42 U.S.C. §§4601-4602; 4621-4638; 4651-4655 (1970).

161. The National Commission on Urban Problems, Building the American City, p. 231.

162. Ibid., p. 231.

reservations.[163] In 1962, FHA established the mutual-help program,[164] through which prospective Indian occupants of publicly-assisted housing could provide the labor needed for construction in exchange for the opportunity to purchase, rather than rent, the new housing provided. Then in 1965, the Bureau of Indian Affairs (BIA) of the Department of the Interior established a program[165] to provide funds for home rehabilitation, downpayments, and a limited home construction program for Native Americans who were unable to obtain housing assistance from other sources.

Despite Federal programs to improve Indian reservation housing, the majority of Native Americans continue to live in poor, and frequently deplorable, housing conditions. The Federal effort to improve reservation housing has been marred by insufficient funding, lack of coordination among Federal agencies having responsibilities affecting construction of such housing, and insensitivity to Indian cultural patterns and desires.[166]

According to the Housing Assistance Council, the Federal approach to Indian housing delivery "has been characterized in various ways, from someone's bad dream to a deliberate effort to impede Indian housing development."[167] The fact that Native Americans who choose to remain on reservations are totally dependent on Federal assistance to secure decent housing underscores the seriousness of the Government's failure.

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163. Marie C. Mcquire, Commissioner, Public Housing Administration, Memorandum to Central Office Divisions and to Branch Heads, Regional Directors, "Low-Rent Housing for Indian Tribes on Indian Reservations," 1961, as reprinted in report of the U.S. Senate, Committee on Interior and Insular Affairs, Indian Housing in the United States (Feb. 1975), pp. 213-15.

164. Public Housing Administration, "FHA Mutual-Help Housing for Indians," (Circular, Dec. 5, 1962) as reprinted in Indian Housing in the United States, p. 221.

165. The Home Improvement Program. Indian Housing in the United States, p. 7.

166. The Housing Assistance Council, "Toward an Indian Housing Delivery System," (1974) p. 3. See also Indian Housing in the United States.

167. Ibid., p. 3.

In many instances the public housing program has not been well adapted to rural Native American lifestyles, and it has rarely served Native American needs successfully. What adaptations in housing design and other features have been made have resulted more often from the demands of particularly vocal tribal representatives, rather than an official assessment that the adaptations were reasonable and necessary.[168]

The activity of at least three Federal agencies is required to produce a single house on a reservation. According to the Housing Assistance Council:

> HUD has major responsibility for the planning, funding, and developing of Indian public housing, and this responsibility can extend to providing streets and some sanitation facilities; the Bureau of Indian Affairs is responsible for providing most access roads to Indian housing projects and for approving all site leases, as well as performing some preliminary site tests; and the Indian Health Service is responsible for providing most water and sanitation facilities. Additionally, HUD requires that all new projects receive "flood plain" clearance from the Army Corps of Engineers, an agency that has never championed the Indian cause; and the BIA, in collaboration with the National Park Service, is required under the revitalized antiquities act dating from 1906, to assure that new projects are not built on archaeological specimens. If these seemingly endless requirements and agencies fail to impede the development of a housing project, then the Department of Transportation enters the picture to approve the construction of new access roads, and to finance the improved roads program provided by the Bureau of Indian Affairs.
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> Somewhere in this arrogance of power stands the tribal housing authority, striving to cope with the requirements of these numerous and distant federal agencies, but rarely able to exert the

168. Housing Assistance Council, "Indian Housing...A Separate Concern" (Washington, D.C.: Nov. 1, 1974), p. 5.

kind of coordinating influence that would assure the timely development of its housing projects.[169]

By 1969, the lack of coordination among these agencies had produced some serious situations that had begun to receive national attention. For example, new housing had been provided that lacked water and sanitation facilities or passable access roads, and serious faults in construction were found in a number of new homes.

These problems prompted HUD, BIA, and the Indian Health Service of the Department of Health, Education, and Welfare to enter into formal agreements[170] that spelled out the responsibilities of each agency with respect to providing reservation housing and established an objective of 8,000 units to be constructed or renovated in each of fiscal years 1970-1974.[171] Despite these agreements, progress has been slow in eliminating poor housing conditions on reservations. The agreements failed to assign to one agency the responsibility of coordinating the activities of all agencies. Thus, coordination is still lacking. In addition, the Indian public housing program was affected by the moratorium on federally-assisted, lower-income housing programs issued by President Nixon in January 1973. Thus, the objectives of the 1969 tri-agency agreements have not been met.

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169. Ibid., pp. 3-4.

170. William H. Stevart, Acting Assistant Secretary for Health Scientific Affairs, Department of Health, Education, and Welfare (March 17, 1969); Lawrence M. Cox, Assistant Secretary for Renewal and Housing Assistance, Department of Housing and Urb. Development (April 4, 1968); Memorandum of Understanding: Provisions of Sanitation Facilities for Indian Housing, as reprinted in Indian Housing in the United States, pp. 293-94. Emery Johnson, M. D., Director, Indian Health Service (May 8, 1969); T. W. Taylor, Commissioner, Bureau of Indian Affairs (May 15, 1969); L. M. Cox (May 26, 1969), Memorandum of Understanding: Provisions of Water Supply and Sewerage Facilities, as reprinted in Indian Housing in the United States, pp. 295-97.

171. Indian Housing in the United States, p. 23.

In 1974, Congress for the first time authorized funds specifically earmarked for Indian housing.[172] Whether or not the desperate housing needs of Indians will be served well under the new authorization depends largely on how much effort HUD, BIA, and other Federal agencies exert to improve the coordination of their activities.[173]

The complexity of Native American land status has also hindered the development of adequate housing. For example, tribal trust land is tax exempt and cannot be mortgaged. Thus, banks are reluctant to make loans to Indians because adequate security is not available. Trust land is held collectively by the tribe, and individual members cannot sell or use it for purposes of which the tribe disapproves.[174]

For the most part, title to Native American land is held in trust by the Federal Government for use by an Indian tribe. As trustee of Native American land resources, however, the Federal Government has frequently acted contrary to Native American interests by accommodating the desires of whites to cultivate tribal trust land or to exploit gold, silver, timber, water, and oil resources located on reservations.[175]

Under the General Allotment Act of 1887,[176] tribal trust land could be allotted to individual members. However, instead of providing Native Americans an opportunity to own their own land to use, if

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172. 88 Stat. 633, Title II, sec. 5(c) (1974).

173. HUD's proposed regulations for Indian Housing Programs were published in the Federal Register on Sept. 19, 1975. The regulations include a new interdepartmental agreement which provides a "mechanism for coordination of assistance from the federal agencies." The agreement requires that representatives of IHA meet with representatives of HUD, IHS, BIA and other involved agencies at the beginning of project development. The agencies are to agree upon a plan for coordination and establish a schedule of actions for the total project development period. Any deviations from the schedule must be justified in writing. 40 Fed. Reg. 43372-43402 (1975).

174. Housing Assistance Council, "Indian Housing...A Separate Concern," p. 6.

175. Ibid., p. 6.

176. 25 U.S.C. §§331-358 (1970).

desired, as security for a home mortgage or home improvement loan, allotment has resulted in the turning over of nearly two-thirds of the land to non-Native-American ownership.[177] Under allotment came taxation, in some instances, as well as the ability to sell property. The pitifully low income of most Native Americans forced many to sell their property, usually at very low prices.

Meeting 1968 Housing Production Goals

In order to achieve a goal of 26 million new and rehabilitated housing units by 1978, as called for in the Housing Act of 1968, an average of 2.6 million units must be produced each year. The 2.6 million level was achieved in 1971 and exceeded in 1972. Annual production of subsidized housing increased sharply beginning in 1968, reaching a peak of approximately 470,000 units in 1970 and 1971.

In the 235 and 236[178] programs alone, 655,923 units were produced between 1968 and December 1972. This figure almost exceeds the amount of federally-assisted housing produced for low- and moderate-income families during the 30 years from 1942 to 1972.[179] Thus, these programs, and a greatly expanded mobile home industry,[180] provided a substantial

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177. Housing Assistance Council, "Indian Housing...A Separate Concern," p. 8. "In an 80-year period alone, the 'Indian' land base dwindled from 138 million acres to a mere 55 million. Two years ago (1972), according to Bureau of Indian Affairs' land inventory, trust lands totaled 50.4 million acres, several thousand acres less than the prior year. The erosion of the Indian land base continues despite federal promises to the contrary." Ibid., p. 6.

178. For a description of these programs see page 25.

179. Arthur J. Mageda, "Housing Report/Major Programs Revised to Stress Community Control," National Journal Reports, Sept. 14, 1974, p. 1376.

180. Mobile homes have become an increasingly important source of housing. In 1950, 63,100 mobile homes were shipped; in 1960, 103,700; in 1970, 401,190; in 1973, 566,900. Fifty percent of the households who occupied mobile homes in 1970 had incomes under $7,000. There is serious question, however, as to the quality of the mobile homes provided in terms of construction, durability, and safety. Congress was sufficiently concerned to include in the Housing and Community Development Act of 1974 special provisions for the creation of Federal mobile home construction and safety standards.

amount of housing for lower-income families. As the decade of the seventies began, it appeared that the Nation might actually achieve the 1968 housing goals, assuming the yearly production levels increased somewhat beyond the 1971 and 1972 levels.

Instead, housing production declined in 1973 and 1974 (table 1).[181] Major causes of the decline have been inflation, which has severely affected all facets of the housing industry, and the imposition of a moratorium on the principal, federally-subsidized housing programs in January 1973.[182] As a consequence, housing starts fell from 3 million in 1972 to approximately 1.7 million in 1974. Production of subsidized housing declined to 280,000 units in 1973 and 270,000 units in 1974. A total of 300,000 units were not provided as a result of the moratorium.[183]

In the face of strong public opposition to the moratorium, the administration released funds for farm labor housing in February 1973. Funds for the rural homeownership program were released in August 1973, in compliance with a Federal court order.[184] Suspension of the 235, 236 rent supplement and conventional public housing programs was continued, however, following the President's announcement in September about the results of a study HUD had made of the suspended programs.[185]

HUD found the subsidized housing programs expensive, inequitable, and inefficient. HUD faulted the 236 program for its high cost and both the 235 and 236 programs for high rates of foreclosure and other financial difficulties. The conventional public housing program was

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181. For subsidized housing production the decline began in 1972.

182. The programs affected were sec. 235 and 236 housing, rent supplements, public housing, sec. 502 rural housing, and sec. 202 housing for the elderly.

183. Kenneth R. Harney, "Commentary," Housing and Urban Development Reporter, vol. 2, no. 7 (Aug. 26, 1974), p. 360.

184. Pealo v. Farmers Home Administration, 361 F. Supp. 1320 (D.D.C. 1973).

185. Litigants contesting the suspension of the 235, 236, and rent supplement funds won their case at the district court level, Pennsylvania v. Lynn, 362 F. Supp. 1363 (D.D.C. 1973), but HUD appealed and the legality of the suspension was upheld by the court of appeals, 501 F.2d 848 (D.C. Cir. 1974).

TABLE 1

HOUSING STARTS, 1968-1974
(in thousands)

	Total units[1]	Federally subsidized units[2]
1968	1,899.5	198.6
1969	1,944.3	232.0
1970	1,910.9	470.5
1971	2,622.0	471.0
1972	3,005.2	389.6
1973	2,657.6	280.8
1974	1,732.9	270.5

1. Includes mobile home shipments.

2. Includes federally subsidized rehabilitation.

Source: U.S. Department of Housing and Urban Development, Housing in the Seventies, table 2, chap. 4, p. 86 and subsequent HUD data.

also faulted for high per unit costs. Only the section 23 leased housing program and the Farmers Home Administration programs received any praise.[186]

All programs were found to be inadequate because of their failure to serve more than a handful of the total number of American families eligible for housing assistance. HUD stated that of the 16 million households with annual incomes of less than $5,000, 94 percent received no federally-subsidized housing aid. Only one of every 15 American families at any income level benefited directly from the $2.5 billion spent annually for housing programs. HUD asserted that tying Federal aid to new construction had caused this result. HUD also found a great disparity in the geographic distribution of the 235 program, with families in the South being five times more likely to obtain such housing than families living in the mid-Atlantic States.

Regardless of the administration's rationale for suspension of subsidized housing programs, the fact remains that its action has caused increased hardships for lower-income families. Because a much greater proportion of minority families are poor, and in need of Federal assistance to obtain decent housing, the impact of the moratorium has been clearly discriminatory in effect.

On October 17, 1975, the Ford Administration announced the release of $264.1 million in funds for reactiving a revised version of the Section 235 mortgage subsidy program of the Housing Act of 1968. The revised program will be aimed at providing mortgage subsidies for families earning between $9,000 and $11,000 annually. Participants will be required to absorb between $1,500 and $2,000 in initial costs as compared with a minimum down payment of $200 under the old section 235. Under the old program, interest costs above one percent were subsidized by the Federal government. Under the revised program the government will only absorb the cost above five percent.[187]

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186. Housing in the Seventies, Chapter 4.

187. Washington Post, Oct. 18, 1975, p. A1.

The revised 235 homeownership program represents the abandonment by the administration of the concept of homeownership for low income families. Henceforth homeownership assistance will be reserved for those whose income is not far below the median income. While the problems associated with the 235 program certainly justified a reconsideration of its standards and its administration, they can hardly justify its total abandonment as a vehicle to provide housing for low income families. The idea that low income families are incapable of managing and maintaining their own home is refuted by the success of millions of low income home owners. For example, 53 percent of white families having an income of under $5,000 own their own homes.[188]

Implications of the Housing and Community Development Act of 1974 for Lower-Income Housing Opportunities

Dispersal of low- and moderate-income housing. -- The 1974 Housing and Community Development Act represents a significant departure from earlier housing legislation in that it conditions the receipt of HUD community development funding on the willingness of a community to provide low- and moderate-income housing within its boundaries. Thus, for example, a suburban locality that heretofore has excluded the development of such housing must now provide a plan for meeting lower-income housing needs if it desires to receive a community development block grant. Formerly, HUD permitted a locality to receive funds under HUD categorical grant programs while disregarding the need for lower-income housing in the locality.[189]

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188. See Table 12, page 147 below.

189. HUD's former categorical grant community development programs such as grants for water and sewer facilities, open space projects and urban renewal were consolidated by the 1974 act into a single community development block grant program, which permits localities great flexibility in carrying on a wide range of community development activities.

In taking this approach, Congress shied away from requiring metropolitan or regional plans for the dispersal of lower-income housing, or from requiring communities that ban lower-income housing to remove restrictive zoning and other barriers, taking its lesson, perhaps, from the defeat of proposed national land use legislation earlier in 1974.[190] One of the issues proponents of land use legislation hoped to address was the problem of lower-income housing concentration in central cities and older neighborhoods outside central cities and its exclusion from newer residential neighborhoods at the expanding fringes of metropolitan areas. Through land use planning techniques, it was felt that suburban areas could be opened to lower-income housing.

In embracing the "carrot and stick" approach in the 1974 act, however, Congress has provided some loopholes that place limitations on the ability of the new housing and community development program to achieve the economic and social integration objectives that Congress expressed in the act. One limitation is that communities can simply refuse to participate in the block grant program. At least two suburban jurisdictions, both located in the Chicago area, have indicated that they may not apply for community development funds because of the requirement to provide lower-income housing.[191]

Another problem lies in the method communities are required to use to assess low- and moderate-income housing needs. HUD regulations[192] provide that the needs of current residents for lower-income housing must be assessed, as well as those of persons employed as the economic base of the community expands. Suburban, upper-income, bedroom communities with a small existing and anticipated employment base may be able to avoid providing lower-income housing, while still qualifying for community bloc grant assistance.

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190. A bill to establish a national land use policy (The National Land Use Bill) died in the House of Representatives, June 11, 1974, Housing and Development Reporter (June 17, 1974), vol. 2, no. 2, p. 51.

191. Berwyn and Cicero, Ill.

192. 39 Fed. Reg. 40144 (1974).

Whether or not dispersal of lower-income minority families and families headed by women occurs under the section 8 program will also depend on the effect HUD regulations have on the location of housing to be made available to section 8 assistance recipients. Following the creation of the section 8 program, HUD issued new regulations[193] that govern, among other things, the selection of sites for newly-constructed or substantially rehabilitated housing for assistance payment recipients. These regulations provide essentially the same site selection standards as those HUD issued in 1972.[194] One weakness, however, is that the new standards do not cover the location of existing housing offered by owners to families certified as eligible to participate in section 8 program.[195] The reason for this exemption is that, in localities which intend to use the existing housing supply, eligible lower-income families may find suitable housing on their own or apply for assistance to pay the rent for the housing they currently occupy. Thus, with respect to the utilization of existing housing, which HUD favors, the extent of dispersal of lower-income families depends entirely on the initiative of these families and the response of owners who have suitable housing to offer.

One feature, for which HUD has made administrative provision in the existing housing part of the section 8 program, may work against dispersal of lower-income families outside low-income areas. HUD offers a "shopper's incentive"[196] that is designed to encourage assisted families to "shop around" and to seek units that provide acceptable housing at lower cost than the fair market rents set by HUD for existing rental

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193. 39 Fed. Reg. 45132 (1974) (substantial rehabilitation). 39 Fed. Reg. 45169 (1974) (new construction).

194. 24 C.F.R. §§200.700-200.710 (1974).

195. 40 Fed. Reg. 3734 (1975).

196. 40 Fed. Reg. 3738 (1975).

housing in the locality. When an assisted family is able to find such a unit, HUD will share with the family the difference between the fair market rent[197] and the actual rent amount charged for that unit, thereby reducing the amount of the contribution towards rent which the assisted family must pay.

The question that arises relates to the location of the cheaper housing. If it is widely dispersed throughout a locality, some dispersal of lower-income minority and female-headed families may occur. If it exists largely in low-income areas or changing neighborhoods,[198] the shopper's incentive may act to encourage such families not to choose housing outside these areas or neighborhoods.

Local and Federal Responsibility for Program Planning and Evaluation.-- A further problem may arise in the planning, review and evaluation of community development block grant applications. In designing the 1974 Housing and Community Development Act, Congress shifted the major responsibility for community development program content and planning to officials and citizens at the local level. HUD can disapprove a community's plan only if it is "plainly inconsistent" with the other data available to HUD pertaining to development and housing needs in that community, if the activities to be undertaken are "plainly inappropriate" to meet the locality's identified needs and objectives, or if the plan does not comply in some other aspect with the requirements of the 1974 act or other applicable laws (including Title VIII, Title VI, and Executive Order 11063).[199] HUD must make findings on the

197. HUD has pegged the fair market rent for a particular unit size and type as the amount of rent paid for at least half of the units of this size and type in a given geographical area. 40 Fed. Reg. 14502 (1975).

198. Traditionally, a changing neighborhood has been defined as one in which the race of the residents is turning from predominantly white to predominantly black or other minority race.

199. 88 Stat. 633, §104(c) (1974).

acceptability of proposed community development and housing plans within 75 days. If approval or disapproval is not given within this period, the application is automatically approved.[200]

In order to meet time constraints and evaluate applications effectively, HUD has, among other things, instructed its field equal opportunity staff to develop profiles in housing and community development needs of minorities and women and other equal opportunity issues for each of the localities served by each field office.[201] It is hoped through this process that field staff will become better informed of and more sensitive to local conditions and have ready access to the type of information needed to perform reviews quickly. Recipient performance will also be evaluated by HUD, with reliance placed largely on the recipient's annual performance report. (The recipient is required by HUD regulations[202] to provide specific data on the ways in which the community development and housing programs have addressed equal opportunity requirements and goals.)

It is too early to determine whether reliance on local initiative in the area of planning and HUD's new procedures for application review and program monitoring will result in better programming to meet the needs of lower-income minorities and women. In the past, local inattentiveness to equal opportunity issues and HUD's failure to correct poor programming have resulted too often in the perpetuation of gross inequities for minorities whose welfare is affected by HUD programs.

New Income Eligibility and Minimum Rent Requirements. --The 1974 act makes all families with incomes less than 80 percent of the median income

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200. 88 Stat. 633, §104(b) (1974).

201. Gloria E. A. Toote, Assistant Secretary for Equal Opportunity, Memorandum to HUD Assistant Regional Administrators for Equal Opportunity (Dec. 19, 1974).

202. 39 Fed. Reg. 40149 (1974).

in a locality eligible for section 8 assistance or for low-rent public housing and sets minimum rents in both programs.[203] These provisions may adversely effect the lowest-income families. A new provision in the public housing program that removes income limits on continued occupancy could have the same consequences if the total supply of low income housing is not increased. Because a larger proportion of all minority families and families headed by women, especially minority women, fall in the lowest-income category,[204] these families may suffer most from the effect of these provisions.

With respect to the income eligibility standard, Congress stipulated that at least 30 percent of the families assisted under section 8, and 20 percent assisted through the public housing program, must have incomes 50 percent or less of the median income in a locality.[205] However, given the limited amount of funding for these programs, it will be impossible to serve all lower-income housing needs. Thus, there is no guarantee that the 30 percent provision will do anything more than permit owners or developers participating in the section 8 program and local public housing authorities to "cream" the top levels of the lower-income sector, leaving the poorest families to fend for themselves.[206]

The new minimum rent requirements, which virtually abolish the equitable rent-to-income ratios established under section 213(a) of the Housing Act of 1969,[207] will cause severe hardships for very poor families who often do not have any funds available for housing. Under the new requirement, these families will have to pay rental expenses from already meager resources needed to pay for food, clothing, medical care, and other essentials.[208]

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203. 42 U.S.C.A. §§1437a(1), 1437f(c)(3) (1975).

204. See page 138, footnote 402, for comparative data and also page 8, footnote 18.

205. 42 U.S.C.A. §§1437a, 1437f(c)(7) (1975).

206. Housing Assistance Council, "The Housing and Community Development Act of 1974: Implications for Rural America" (Washington, D.C.: 25, 1974), p. 13.

207. See footnote 85, p. 28.

208. Housing Assistance Council, "The Housing and Community Development Act of 1974," p. 20.

Other Potential Problems. --The fair market rents that HUD has established for the section 8 program may be too low for section 8 to be attractive to owners or developers. The 1974 act provides for flexibility in determining the level of rent needed for a particular unit, by allowing in special cases for an upward adjustment to 110 percent--and in rare instances, 120 percent--of the fair market rent figure established for units of the same size and type.[209] HUD contends that its fair market rent determinations are equitable and apparently believes that the upward adjustment provision will take care of any problems that might arise. Other groups, such as the National Association of Housing and Redevelopment Officials, the National Association of Home Builders, and the National Committee Against Discrimination in Housing, have disputed HUD's contention.[210]

There is also concern that developers may not be able to secure financing to construct new units for section 8 assistance recipients. Tax-exempt bond financing provided a large share of the money to finance construction under the former section 23 leased housing program and is expected to be an important source in the section 8 program. Bond rating services have recently indicated a disenchantment with State-backed "moral obligation" bonds on which State housing finance agencies have depended to provide funds for lower-income housing construction. Proliferation of such bonds and lack of Federal subsidy funds were cited as causes of the change in attitude.[211] HUD expects State housing finance agencies to play a significant role in the section 8 new construction program. Nevertheless, financing problems could seriously limit their ability to participate.

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209. 42 U.S.C.A. §1437f(c)(1) (1975).

210. Housing and Development Reporter, vol. 2, no. 13 (Nov. 18, 1974), p. 638.

211. Ibid., vol. 1, no. 11 (Oct. 3, 1973), p. AA-1.

IMPLEMENTATION OF FAIR HOUSING REQUIREMENTS

Executive Order 11063 of 1962

Aside from the limitation of Executive Order 11063 coverage to federally-assisted housing, the principal weakness of the order lay in its enforcement by Federal administrators.

First, FHA under the order exempted one- and two-family, owner-occupied dwellings.[212] Secondly, Federal agencies did not adopt an affirmative program to prevent discrimination in federally-assisted housing. Instead, reliance was placed on the complaint process as the principal means through which compliance would be achieved.

Builders and owners of housing asisted through agreements or contracts signed after November 20, 1962, were required to certify that they would not discriminate against prospective tenants or owners on the basis of race, creed, color, or national origin.[213] However, no followup procedures were implemented to ensure that these certifications were actually being complied with, unless a complaint was received with respect to the practices of a particular builder or owner.

Builders and owners of housing under agreement or contract prior to November 20, 1962, were affected by the order only if a complaint was filed against them. Then the Federal Government would attempt to resolve the complaint through the exercise of its "good offices."[214] In such cases, if remedies failed, the Federal Government was empowered to litigate the case. Not in a single instance, however, was litigation pursued.[215]

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212. U.S., Commission on Civil Rights, Federal Civil Rights Enforcement Effort (1971), p. 155 (cited hereafter as Federal Enforcement Effort (1971). This exemption was removed in June 1969.

213. §101, 3 C.F.R. 652 (1959-1963). Early regulations adopted pursuant to the order are not available in manual form. They may be obtainable through HUD archives. See Federal Enforcement Effort (1971), pp. 155-56.

214. §102, 3 C.F.R. (1959-1963 Comp.). See Federal Enforcement Effort (1971), p. 140.

215. Federal Enforcement Effort (1971), p. 140.

With respect to public housing, the Executive order had somewhat greater impact in changing the way the program was being operated. Because of the order, LHA's in a small number of instances made concerted efforts to locate public housing projects outside areas of minority concentration in order to provide minority applicants a broader range of housing opportunities.

With respect to the selection of public housing tenants, LHA's that had, prior to the Executive order, assigned tenants on a racially-segregated basis, were required to establish a new plan for selection that permitted applicants a free choice in the selection of a unit, regardless of its location in a white- or nonwhite-occupied project. As in the case of public schools, freedom-of-choice proved ineffective in producing open occupancy in public housing.

The principal defect of the new policy was that it placed the burden to desegregate on the person least able to accomplish the goal, i.e., the individual applicant who was to make a "free choice" in a community in which segregated housing patterns were frequently traditional. HUD found that in such situations, "for various reasons such as the mores of the community, fear of reprisals, types of neighborhoods, inducement by local authority staff...such freedom of choice plans...did not provide applicants with actual freedom of access to, or full availability of, housing in all projects and locations."[216]

Administration of Title VI of The Civil Rights Act of 1964

Insofar as Federal housing programs are concerned, early Title VI enforcement had its greatest impact in public housing. Federal tenant selection policies and policies relating to the selection of locations for public housing projects were strengthened to promote open occupancy and the location of public housing outside areas of minority

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216. U.S., Department of Housing and Urban Development, "Statement of the Basis for Low-Rent Housing Manual Sec. 102, exh. 2, 'Requirements for administration of low-rent housing programs under Title VI of the Civil Rights Act of 1964,'" July 1967.

concentration. In tenant selection, a modified freedom-of-choice policy[217] was adopted, and is still in effect, whereby an LHA could permit applicants to exercise up to three choices in the selection of a unit.[218] If there was a suitable vacancy in more than one location, the applicant was to be offered a unit in the project that contained the highest number of vacancies. At the time the new policy was first implemented, white-occupied projects frequently had the highest number of vacancies, whereas the public housing applicant workload had grown more heavily black. Thus, the new policy anticipated that some mixed occupancy would occur, if the applicant's choice of units were restricted to those in projects with the highest vacancy rates.

LHA's were required to abolish dual waiting lists that had been maintained by race and to create a unified waiting list for all applicants based on the date and time of application. Enforcement of the new tenant selection plans proved successful in producing integrated occupancy patterns in a number of instances, particularly in smaller towns and cities in which the public housing workload included a good number of white as well as minority families, and in which local housing authority officials took steps to implement the plans aggressively. In cities with large minority populations, however, segregated occupancy patterns in public housing persist. In many such cities, the public housing workload is largely nonwhite, making substantially integrated occupancy impossible to achieve in all projects.

For site selection, the requirement became that a local housing authority could not utilize criteria or methods of administration in the selection of locations for public housing that had the effect of subjecting persons to discrimination because of their race, color, or national origin, or of "impairing accomplishment of the objectives of

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217. 24 C.F.R. §1.4(b)(2)(ii) (1974).

218. U.S., Department of Housing and Urban Development, (Handbook 7401.1) ch. 9, sec. 1, app. 2.

the program...as respect to persons of a particular race, color, or national origin."[219] Sites located only in areas of minority concentration were prima facie unacceptable because they denied minorities an opportunity to locate outside areas of minority concentration. If such sites were selected by the local housing authority, HUD required that the LHA select alternative or additional sites, so as to provide a more balanced distribution of the proposed housing, or factually substantiate that no acceptable sites were available outside areas of racial concentration.

This regulation represented a substantial step forward in efforts to change long-established practices of local housing authorities and promote new, nonsegregated housing opportunities for lower-income minorities throughout a community. Beyond this, the regulation went to the results of site-selection criteria, quite apart from local authority intent to either promote or discourage the development of public housing on a "balanced distribution" basis. The principal weakness of the new policy was that, in effect, it permitted waiver of the nondiscrimination requirement if the LHA could show that no sites with costs under the cost acquisition limits were available outside racially-concentrated areas, that proper rezoning could not be obtained from the city for any acceptable site outside these areas, or that approval had been denied by local officials of all acceptable sites in white areas.[220]

Thus, cost, zoning, and local political review, which lie at the heart of the constraints LHA's have faced, were singled out by Federal nondiscrimination regulations as satisfactory reasons for an LHA's failure to achieve nondiscriminatory site selection. As long as an LHA was provided with these formidable excuses, the inevitable result

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219. 24 C.F.R. §1.4(b)(2)(1) (1972).

220. Stephen T. Buehl, Norman D. Peel, and Garth E. Pickett, "Racial Discrimination in Public Housing Site Selection," Stanford Law Review, vol. 23 (Nov. 1970), p. 73.

in many instances was the perpetuation of segregation through public housing site location.[221]

Title VIII of the Civil Rights Act of 1968

Under the affirmative mandate and expanded coverage of Title VIII, Federal activity to assure equal opportunity in housing for minorities and, more recently, for women has increased substantially. Despite all the activity, success has been limited due largely to intra- and inter-agency disagreements over policy, lack of cooperation, inadequate regulations, temporizing, insufficient staff, and lack of commitment. Thus, the Federal effort to achieve a society in which minorities and women have full access to the housing supply, on a nonsegregated basis, has been severely hampered.

Department of Housing and Urban Development

HUD has primary responsibility for Title VIII enforcement relative to the processing of complaints and coordination of the overall fair housing effort of other Federal agencies. HUD efforts have so far had minimal impact in curbing housing discrimination.[222]

HUD's processing of Title VIII complaints is frequently slow and negotiations are protracted. Because HUD can only negotiate and conciliate complaints, those cases in which HUD is not successful must be referred to the Department of Justice for further review and action. Lack of sufficient equal opportunity staff and slow processing has resulted in a substantial backlog in complaints. Only recently has HUD made a concerted effort to reduce this backlog.

HUD refers Title VIII complaints to 28 States and 16 localities that have fair housing enforcement powers substantially equivalent to those

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221. Ibid., p. 116.

222. U.S., Commission on Civil Rights, The Federal Civil Rights Enforcement Effort--1974, vol. II, "To Provide...For Fair Housing" (1974), p. 328. (Cited hereafter as Federal Enforcement Effort (1974).)

given to HUD under Title VIII.[223] Frequently State and local fair housing agency negotiations are more successful than HUD's, possibly because many of these agencies have greater enforcement powers. However, a number of these agencies have a substantial complaint backlog also.[224]

HUD has mounted several media campaigns to acquaint people with their rights under Title VIII and to solicit complaints, but many minorities have not been reached, in particular persons of Spanish origin, Asian Americans, and Native Americans.[225] The U.S. Commission on Civil Rights believes that a principal weakness in HUD's fair housing program is its failure to divide its available resources between processing individual complaints and conducting community-wide investigations to identify patterns of housing discrimination and to review compliance with all equal opportunity requirements in HUD programs.[226] From July 1972, when HUD first acknowledged the necessity for community-wide investigations, to November 1974 only four community-wide investigations had been completed.[227]

Requirement for Site Selection and Affirmative Marketing. --In 1972 HUD issued two sets of standards designed to create new nonsegregated housing opportunities for minority beneficiaries of all HUD housing programs. New project selection criteria[228] were developed to provide a uniform standard governing the selection of locations for most subsidized housing for low- and moderate-income families .

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223. Ibid., p. 42.

224. Ibid., p. 43.

225. Ibid., pp. 32-33.

226. Ibid., p. 329.

227. Ibid., pp. 49-50.

228. 24 C.F.R. §200.700 (1973). These regulations were issued pursuant to E.O. 11063 and Title VI, as well as Title VIII.

Affirmative marketing requirements[229] were developed to govern the marketing of all FHA-subsidized and insured housing.

Project Selection Criteria. --The development of project selection criteria came in response to important court decisions[230] and was intended to implement more fully the mandate of Title VI as well as the more recent mandate of Title VIII. Several studies pointed up the urgent need for site selection standards that would prevent the continuing concentration of low-income and minority families resulting from federally-sponsored housing programs. In its 1971 report on the racial and ethnic impact of the 235 program,[231] the U.S. Commission on Civil Rights found that the traditional pattern of separate and unequal housing markets for white and minority families was being perpetuated. The Commission studied the program in four cities and found that new 235 housing was in most instances located in suburban areas and nearly all was being purchased by white families. To the extent minorities purchased new 235 housing, the housing was located in subdivisions reserved exclusively for minority residence. By contrast, in all four metropolitan areas, most of the existing 235 housing was located in ghetto areas or changing neighborhoods in the central city and nearly all was being purchased by minority families. Minority 235 buyers tended to purchase housing that was older and less expensive than the housing purchased by their white counterparts.[232]

The 1972 project selection criteria provided a rating system by which all proposed projects would be evaluated for their potential effect on minority patterns of residence. Thus, two of six criteria

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229. 24 C.F.R. §200.600 (1973). These regulations were issued pursuant to E.O. 11063 as well as Title VIII.

230. Gautreaux v. Chicago Housing Authority, discussed pp. 100-103 below; Shannon v. Department of Housing and Urban Development, 305 F. Supp. 205 (E.D. Pa. 1969), aff'd, 436 F.2d 809 (3d Cir. 1970).

231. Homeownership for Lower Income Families (1971). (Cited hereafter as Homeownership.)

232. Homeownership, p. 89.

were designed to increase housing choices for minorities and low-income families outside of minority and low-income areas. The development of subsidized housing in minority areas was not acceptable unless the area was part of an official development plan, such as an urban renewal project, or it could be shown that an overriding need existed for housing in a minority area that could not be met by other new and existing housing located elsewhere.[233]

The potential impact of the project selection criteria was reduced substantially because the programs to which it applied were suspended in January 1973, less than a year after the criteria were released in final form. The actual impact of these criteria is also unknown. HUD has not made a comprehensive study of the requirements' effect on selection of locations for the relatively small number of projects to which the requirements did apply. Undoubtedly, however, enforcement of the requirements themselves or acceptance of the goals they were meant to serve has changed somewhat the way in which subsidized housing for minorities was traditionally located in urban centers. One small study[234] conducted for HUD showed that of fourteen 236 projects studied in metropolitan Washington, 5 were located in predominantly black areas of the District of Columbia and 9 were located in predominantly white areas of suburban Maryland and Virginia. All but one of the 9 suburban projects had 15 percent or more black occupancy. Of the black occupants, 21 percent moved from the central city.

A second study[235] showed that 18 percent of the blacks who moved into 235 and 236 housing constructed within the metropolitan areas of HUD's far western, southwestern, and middle-Atlantic regions moved from central city to suburban areas. These figures compare with a national rate of about 8 percent for black movement to the suburbs between 1960 and 1970. The findings relative to the 235 program do not necessarily

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233. An assertion of overriding need had to be factually substantiated to the satisfaction of HUD.

234. Housing in the Seventies, p. 103.

235. Ibid., p. 104.

contradict the findings of the 235 study conducted by the U.S. Commission on Civil Rights. The HUD-sponsored studies did not give data indicating whether or not the suburban neighborhoods to which minority 235 buyers moved were integrated or segregated.

Affirmative Marketing Requirements. --To promote greater housing choice by tenants and home buyers in all FHA housing programs, HUD issued the affirmative fair housing marketing regulations in February 1972. The regulations state that "it is the policy of (HUD) to administer its FHA housing programs affirmatively so as to achieve a condition in which individuals of similar income levels in the same housing market area have a like range of housing choices available to them regardless of their race, color, religion or national origin." [236] Each applicant for participation in FHA's subsidized and unsubsidized housing programs is required to pursue affirmative marketing policies in soliciting buyers and tenants, in determining their eligibility, and in concluding sales and rental transactions. Builders and developers must prepare a plan which provides for affirmative outreach to persons who might not ordinarily apply for the housing to be covered by the plan. In addition, sales and management personnel must be instructed regarding nondiscrimination and fair housing policies. Staff engaged in sales and management must be recruited on a nondiscriminatory basis from both majority and minority groups. [237]

The major weakness of the regulations is that they do not apply to existing FHA-insured or subsidized projects but only to those projects for which builders and sponsors made application following the effective date of the regulations. [238] Furthermore, the regulations apply only to the HUD-subsidized or insured housing constructed by the

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236. 24 C.F.R. §200.610 (1975). These regulations also now apply to builders and developers of newly-constructed or substantially rehabilitated housing to be offered to families assisted under section 8.

237. 24 C.F.R. §200.620 (1975).

238. 24 C.F.R. §200.615 (1975).

builder or developer and not to other privately-financed housing he or she markets.[239] Another problem has occurred because of the uneven administration of the requirements in the various HUD area offices. Experience has shown that one area office may assess the adequacy of an affirmative marketing plan differently than another office.

As part of the plan HUD requires that the projected racial mixture of the occupants must be estimated.[240] The U.S. Commission on Civil Rights found, however, that HUD has not provided adequate criteria by which anticipated results might be set.[241] In addition, monitoring the enforcement of HUD-approved plans has been uneven. Only rarely have onsite reviews been made to determine how affirmative marketing plans are working. However, of eight builders reviewed, six were found out of compliance with their plans, showing the need for better monitoring.[242] Rather belatedly, HUD has begun to take steps to determine what kinds of affirmative marketing plans have been effective. HUD hopes to provide a manual that will give much needed guidance in the development of strong and more uniform affirmative marketing plans.

In addition to the implementation of affirmative marketing requirements with respect to individual builders and developers, HUD has encouraged the development of industry-wide affirmative marketing plans that would involve most builders in a given metropolitan area.[243] In Dallas, 35 major builders agreed in November 1972 to implement a plan that covers all housing produced by the participating builders and provides for an advertising campaign that is much stronger than that required by the affirmative marketing regulations. A similar plan has been developed by major builders in San Diego.[244]

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239. Ibid.

240. Applicants must complete a form, supplied by HUD, on which the projected mixture must be indicated.

241. Federal Enforcement Effort (1974), p. 85.

242. Ibid., p. 67.

243. Ibid., p. 80.

244. Ibid., p. 83.

The overall impact of the affirmative marketing regulations has not been assessed by HUD. However, HUD believes that racially mixed occupancy has occurred to a significant extent in housing covered by the requirements. In April 1974, the Chicago Tribune presented an analysis of occupancy in 34 projects constructed under the 236 program.[245] It was found that a stable mixture can be achieved of black and white tenants and tenants of varying income levels. Moreover, well-integrated occupancy can be achieved regardless of the location of the projects, whether in the central city, suburbs, or small towns. The success in these projects is attributed to careful design and management of the project, rather than to affirmative marketing techniques, which would not have been required of those builders who received approval for projects prior to February 1972. In addition, the small number of three and four bedroom apartments provided limited the number of large families, and the screening of applicants limited the number of families receiving public assistance and fatherless families.

Title VIII Enforcement by Other Federal Agencies

The efforts of most other Federal agencies to promote equal housing opportunities in compliance with Title VIII have for the most part had only minor impact. A notable exception is the Department of Justice, which has filed a number of Title VIII suits and obtained favorable rulings in nearly every instance. The actions of these Federal agencies show a distinct unwillingness to establish and enforce the kinds of requirements needed to eliminate discrimination in housing.

VA and FmHA. --The Veterans Administration (VA) has provided a Title VIII complaint-processing procedure and since 1968 has been developing and expanding a program to collect data on minority participation in VA's acquired property, loan guaranty, and direct loan programs. However, VA requires only a simple certification of nondiscrimination from builders, developers, lenders, and appraisers who participate in VA housing programs. Although VA has proposed affirmative marketing

245. "How to Make Subsidized, Integrated Housing Work," Apr. 7, 1974.

regulations[246] similar to those of HUD, they have not been issued in final form.

The need for more stringent requirements in VA programs is evident from data on minority participation. In the acquired properties program, for example, although a substantial number of minorities have purchased homes, these homes have been mostly in minority neighborhoods.[247]

VA has lagged well behind FHA[248] in dealing with problems of sex discrimination in VA housing programs. For example, VA had a long standing policy under which pregnancy was a basis for discounting the wife's income in establishing a family's income eligibility for a VA home loan. In 1973, the practices of some VA home lenders came to light; women were being required to submit affidavits or make promises about their current or future use of birth control methods as a condition to giving credit to their income. In February 1973, VA stated that it neither condoned nor required this practice,[249] but VA did not revise its basically restrictive policy on pregnancy and require a full counting of the wife's income until later that year.[250] VA now requires that full credit be given to the wife's income, but towards the end of 1974, had no reliable data to show how well the new policy was being implemented.

The Farmers Home Administration (FmHA) has issued affirmative marketing requirements.[251] However, builders and managers of FmHA housing are not asked to develop written plans indicating what steps will

246. 37 Fed. Reg. 17217 (1972).

247. Federal Enforcement Effort (1974), p. 245.

248. FHA revised its policies in the 1960s so that, under normal circumstances, the wife's income would be fully counted.

249. Rohde, "Ending Sexism," p. 8.

250. U.S., Veteran's Administration, Department of Veteran's Benefits, Information Bulletin 26-73-1, "Wives' Income" (Feb. 2, 1973).

251. U.S., Veteran's Administration, Department of Veteran's Benefits, Manual M26-1, Change 42 (July 18, 1973).

252. 7 C.F.R. §1822.381 et seq. (1975).

be taken to comply with the requirements. Without such plans, affirmative marketing requirements are virtually meaningless. In 1969, FmHA set goals to increase the relatively small number of minorities who participate in rural housing programs. Since that time the percentage of minorities participating has increased somewhat each year, but greater efforts are needed to assure minorities equality of access to and benefit from FmHA programs.

Federal Financial Regulatory Agencies. --Since passage of Title VIII, HUD and public interest groups have pressured the Federal financial regulatory agencies to use their powers to bring the mortgage lending practices of the banks and building and loan associations they regulate into full compliance with Title VIII nondiscrimination requirements. The potential impact of such action is great inasmuch as regulatory agencies promulgate far-reaching rules, require submission of various reports, and maintain a network of Federal examiners who routinely visit and examine regulated institutions. These agencies also have at their disposal effective sanctions, such as cease and desist orders, to assure that lending practices are in compliance with all applicable Federal laws and policies and in accordance with sound business practices.

Despite their clear responsibility to ensure that Title VIII is enforced, the Federal financial regulatory agencies have failed to take strong steps to require compliance by their regulatees.

All that the Comptroller of the Currency, the Federal Deposit Insurance Corporation and the Federal Reserve System have done is to issue policy statements requiring regulatees to display an equal housing lender poster and to state in advertisements that loans are made on a nondiscriminatory basis.[253] Although not entirely convinced that discrimination occurs in mortgage lending, these agencies together with the Federal Home Loan Bank Board also instituted an experimental data

253. Federal Enforcement Effort (1974), pp. 147-48.

collection program in 18 metropolitan areas through which data were recorded with respect to the race of applicants for mortgage loans.[254]

On May 6, 1975, the results of the Federal Reserve-Federal Desposit Insurance Corporation survey were announced.[255] Redlining[256] was the specific practice to which this study was directed and FRS found that the data "must be considered marginal at best" for purposes of attempting to identify this practice.[257] The survey was afflicted with a number of limitations and deficiencies in the data. For example, the period under review was atypical because of very low mortgage activity. Similarly, a potentially serious error occurred with respect to recording of zip codes.[258] It is apparent that FRS-FDIC data collection techniques must be improved considerably if meaningful information is to be obtained relative to discriminatory practices in mortgage lending.

Under considerable pressure from public interest groups, the Federal National Mortgage Association (FNMA) followed the FHA lead and revised property underwriting guidelines[259] it had developed shortly

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254. The program ran from June 1 through November 30, 1974. Three different reporting forms were used (Forms A, B and C). The forms used in some cities required information relative to applicants' age, sex, marital status and certain financial information in addition to racial data.

255. FRS-FDIC used the Form B approach which recorded only racial data. Results of the COC-FHLBB study, utilizing Forms A and C, had not been released as of June 13, 1975.

256. Redlining is defined by FRS-FDIC as "a process whereby financial institutions avoid making any mortgage and home improvement loans in a particular geographic area." Letter from George W. Mitchell, Vice Chairman, Board of Governors of the Federal Reserve System, to Senator William Proxmire, May 6, 1975, Enclosure, p. 3.

257. Ibid., p. 10.

258. Zip code was defined for purposes of the study as "the address of the property which was the subject of the application. Because initial instructions to institutions completing Form B did not comply with this definition, a significant number of errors could have been made. FRS indicates that it is impossible to determine the actual extent of error. Ibid., p. 5.

259. FNMA, Conventional Selling Contract Supplement, Sec. 311.03(D) Dec. 15, 1971.

after the establishment of a secondary market for conventional mortgages made by mortgage bankers and commercial banks in 1970. These guidelines, which originally included a provision that generally only one-half of a wife's income should be counted, were changed to recommend counting the full income of the wife. There is little data to show how well the stated policy has been implemented because FNMA has not established a system of data analysis on loans accepted or rejected for purchase.

The Federal Home Loan Bank Board has issued regulations[260] setting forth its nondiscriminatory policy that deal specifically with the practice of discounting the wife's income as well as with other discriminatory practices and advise member institutions to examine their underwriting policies to ensure that they are not unintentionally discriminatory in effect. These institutions are not required, however, to take positive action to end discriminatory practices.[261]

The Housing and Community Development Act of 1974 requires that full credit be given the wife's income in all federally related mortgage transactions.[262] The agencies involved are to establish their own procedures for carrying out this section of the Act and the Justice Department is to coordinate the activities of the agencies. Although some of the Federal regulatory agencies have not issued regulations to implement the requirements of the new law, other agencies (e.g. FHA) were in compliance with section 808(a) and simply changed their handbook to reflect their compliance.[263]

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260. 12 C.F.R. §531.8 (1975).

261. Federal Enforcement Effort (1974), p. 151.

262. 88 Stat. 633, §808(a) (1974).

263. Michael Wells, Program Analyst, U.S. Department of Housing and Urban Development, telephone interview, Oct. 24, 1975.

On October 16, 1975 the Federal Reserve Board issued regulations, effective October 28, 1975, to implement the Equal Credit Opportunity Act,[264] which pertains to mortgage as well as other credit transactions. If strongly enforced, the Act could help eliminate sex discrimination in mortgage lending practices. The regulations prohibit the use of sex or marital status in any credit "scoring" system.[265] Concerted action is needed to eliminate practices that are known to persist despite the prohibitions of Title VIII. A recent study of mortgage lending practices in Hartford, Connecticut, by the U.S. Commission on Civil Rights found that Title VIII has not eliminated racially discriminatory practices. Rather, it is apparent that such practices "have gone underground."[266] Racially discriminatory policies are now rarely espoused openly, but the traditional banking attitudes and perceptions about minorities persist. With respect to women homeseekers, the extension of Title VIII protection is so recent that blatant discrimination against them most likely continues in most mortgage lending institutions.

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264. 88 Stat. 1500, Title V (1974).

265. 40 Fed. Reg. 49298-49310 (Oct. 22, 1975).

266. Mortgage Money, p. 66.

General Services Administration. --The record of the General Services Administration (GSA) shows that it has used little of its power to promote fair housing. The U.S. Commission on Civil Rights found that "GSA's responsibilities provide it with leverage to ensure that fair housing becomes a reality in all communities in which Federal agencies locate."[267] However, fair housing considerations and the need for low- and moderate-income housing are not of active concern to GSA, despite the HUD-GSA memorandum of understanding,[268] in which GSA agrees to solicit HUD advice on fair housing concerns in communities selected as potential sites for Federal installations. Because of deficiencies in the procedures for implementing the memorandum, its enforcement has been poor.[269] GSA has not always asked HUD to provide information concerning fair housing in the communities under consideration for Federal space. At times GSA has simply asked HUD's concurrence with a GSA assessment. HUD reports have generally been poor, but GSA has not questioned HUD's execution of its duties under the memorandum.[270]

In only two instances has HUD found that a lack of low- and moderate-income housing rendered a proposed Federal agency site unacceptable and has called for the development of an affirmative action plan to provide

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267. Federal Enforcement Effort (1974), p. 271.

268. Memorandum of Understanding between the Department of Housing and Urban Development and the General Services Administration concerning low- and moderate-income housing, signed by Robert L. Kunzig, Administrator, GSA, June 11, 1971 and George Romney, Secretary, HUD, June 12, 1971 (41 C.F.R. §101-17.4801)(1973).

269. In the area of making determinations as to the extent of discrimination in the sale or rental of housing, for example, the procedures provide no outline of the steps to be taken. HUD, Procedure for Implementation of Memorandum of Understanding between HUD and GSA (May 1973).

270. Federal Enforcement Effort (1974), pp. 124-25.

the housing needed. Such a plan is required by the memorandum if HUD finds that housing opportunities for minorities and lower-income families are restricted in the community. In one instance, GSA has disagreed with a portion of HUD's findings about lower-income housing need; [271] and, in the other, GSA has not made a final determination of the extent of the need for low- and moderate-income housing in connection with the development of the Federal facility.[272]

Relocating agencies have not pressured GSA to carry out its fair housing responsibilities, thereby failing to fulfill an important aspect of their own fair housing responsibilities. As a result, the need for low- and moderate-income housing and for open housing in communities in which Federal agencies relocate receives minor emphasis among the many considerations relative to the selection of Federal agency sites.

The Department of Defense. --The Department of Defense (DOD) requires that all off-base housing sold or rented to military personnel must be available on a nondiscriminatory basis.[273] Beyond this requirement, DOD takes little formal action to promote housing opportunities for minority and female service persons. Military housing coordinators usually solve cases of discrimination by simply removing from their housing lists the names of agencies or persons who are known to discriminate against minorities or women in the sale or rental of housing. [274] If a complaint is conciliated, DOD regulations only require the respondent to sign a nondiscrimination certification. DOD does not monitor the respondent's subsequent performance. [275] HUD has attempted

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271. The site is located in Woodlawn in Baltimore County, Md. The League of Women Voters has filed suit to require an affirmative action plan that would provide housing in conformity with HUD's findings.

272. Laguana-Niguel, Orange County, California.

273. Federal Enforcement Effort (1974), p. 132.

274. Federal Enforcement Effort (1974), p. 132, n. 364.

275. Ibid., p. 132, n. 363.

on occasion to work with DOD to coordinate Title VIII enforcement activities. For the most part, however, DOD has failed to respond to HUD's limited initiatives.[276]

Department of Justice. --By November 1974, the Department of Justice (DOJ) had instituted over 200 fair housing suits against more than 500 defendants.[277] The record of success in these cases is impressive. Most of them relate to a pattern or practice of discrimination. A small number of cases consist of single complaints that HUD was unable to conciliate successfully and hence referred to DOJ for litigation.

This record notwithstanding, DOJ has been slow to institute Title VIII challenges against exclusionary land use practices through which communities have prevented the construction of low- and moderate-income housing. It is apparent that the Department will only consider filing cases in which racial discrimination is clearly a substantial factor among the issues involved.

Even when it is apparent that racial discrimination has served as a basis for exclusionary actions, the Department can move slowly. The Federal Black Jack (Missouri) case[278] was pending for months while the Department considered whether or not to file. However, the Department's recent success in this case represents an important victory in fair housing litigation.[279]

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276. Ibid., pp. 132-33.

277. Letter of J. Stanley Pottinger, Assistant Attorney General, Civil Rights Division, to John Hope III, Director, Office of Program and Policy Review, United States Commission on Civil Rights, Nov. 15, 1974, p. 4.

278. United States v. City of Black Jack, 372 F. Supp. 319 (E.D. Mo. 1974) rev'd, 508 F.2d 1179 (8th Cir. 1975).

279. A second case is United States v. City of Parma, which was consolidated with Cornelius v. City of Parma and eventually dismissed on the basis of Warth v. Saden, 95 S. Ct. 2197 (1975), discussed on p. 99 below. Dismissed 374 F. Supp. 730 (N.D. Ohio 1974), rev'd, 506 F.2d 1400 (6th Cir. 1974), vacated, _____ U.S. _____, 95 S. Ct. 2673 (1975), remanded with instructions to dismiss, 6th Cir. (Sept. 24, 1975).

FEDERAL COURT ADJUDICATION OF EQUAL HOUSING OPPORTUNITY ISSUES

JUDICIAL CONSTRUCTION OF THE CIVIL RIGHTS ACTS OF 1866 AND 1968

In legal decisions under the Civil Rights Act of 1866 and Title VIII of the Civil Rights Act of 1968, courts have rendered broad and imaginative readings of the provisions of these statutes. It is evident in many decisions that the courts intend to carry out the spirit as well as the letter of fair housing laws.

In Jones v. Alfred H. Mayer Co., the Supreme Court held that the Civil Rights Act of 1866 "bars all racial discrimination, private as well as public, in the sale or rental of property."[280] In so holding, the Supreme Court, unlike Title VIII, allowed no exceptions. Every housing unit in the United States is covered.[281] Although the 1866 statute is declaratory only, the Court held that its broad equity power made injunctive relief appropriate.[282]

In this landmark decision, the Supreme Court expressed in broadest terms its commitment to judicial relief when access to and acquisition of property is denied because of race, a commitment the majority found necessary despite passage of the Fair Housing Act two months earlier. Subsequent cases have indicated that the Court's decision has been essential to litigation by providing the basis for relief in situations in which, even with the broad provisions of Title VIII, relief otherwise would not have been available.[283]

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280. 392 U.S. 409, 421 (1968).

281. Id. at 421.

282. Id. at 414.

283. The Supreme Court, in comparing the Civil Rights Act of 1866 and Title VIII of the Civil Rights Act of 1968, made clear the importance of both acts, 392 U.S. at 409-416.

An indication that the courts are committed to an expansive interpretation of the 1866 statute is found in decisions that have followed upon Jones v. Alfred H. Mayer Co. Thus, it has been established that a plaintiff can recover both punitive and compensatory damages as well as attorney's fees.[284] Courts have also allowed plaintiffs to maintain suits under both the 1866 statute and Title VIII without having to choose to proceed under one act rather than the other.[285]

In two important decisions, courts have held that the 1866 act does not apply solely to outright denial of housing. Illegal discrimination has been found to exist in situations in which minority home buyers have been given less favorable terms or charged higher prices.[286] In a recent case, black homeowners in south Chicago argued that the Civil Rights Act of 1866 prohibits the charging of higher prices for houses in black neighborhoods than for comparable houses sold to whites in white neighborhoods. On appeal, the court sustained plaintiffs argument, reversing findings of the trial court that had ruled in favor of the defendants. Defendants had justified the pricing disparities by evidence showing that demand in the black housing market supports the higher mark-up for black buyers. The court of appeals rejected this argument.[287]

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284. Sullivan v. Little Hunting Park, 396 U.S. 229 (1969); Lee v. Southern Homes Sites Corp., 444 F.2d 143 (5th Cir. 1971). In Seaton v. Sky Realty Co., 491 F.2d 634 (7th Cir. 1974), humiliation was held to be a proper basis for an award of compensatory damages under the Civil Rights Act of 1866 and Title VIII.

285. Smith v. Sol D. Adler Realty Co., 436 F.2d 344 (7th Cir. 1970); Brown v. Ballas, 331 F. Supp. 1033 (N.D. Tex. 1971).

286. Contract Buyers League v. F&F Investment, 300 F. Supp. 210 (N.D. Ill. 1969), aff'd with respect to other issues sub nom. Baker v. F&F Investment, 420 F.2d 1191 (7th Cir. 1970), cert. denied, 400 U.S. 821 (1970).

287. Clark v. Universal Builders, Inc., 501 F.2d 324 (7th Cir. 1974); cert. denied, 419 U.S. 1070 (1974). The plaintiffs showed that appraisers had pegged the sale prices of south Chicago houses built by Universal Builders, Inc., at $3,729 to $6,508 above the going prices for comparable housed located in Chicago's suburbs. House-by-house comparisons of south Chicago and suburban homes showed that the average gross profit on south Chicago homes was almost double the average profit usual for the same type of house in suburban Deerfield, Ill.

Because the 1866 statute lacks the specificity and detail found in Title VIII, suits brought under it may avoid some of the limitations and disadvantages of a Title VIII suit. Title VIII has a short statute of limitations,[288] limits the successful plaintiff's recovery to actual damages and not more than $1,000 punitive damages, and restricts the recovery of attorney's fees to the plaintiff who is unable to pay.[289] These constraints do not exist under the 1866 Act.

In cases arising under Title VIII, the courts have given expansive interpretation to the provisions of the act. In the leading case of Brown v. State Realty Co.,[290] for example, the court held that defendants had violated Title VIII in merely attempting to induce residents of a particular neighborhood to list with them. The defendants, a real estate broker and her agents, were charged with making statements to several neighborhood residents that the area was "going colored" and with posting a "sold" sign to represent that a house had been sold when in fact it had not.

Statements of this nature may violate Title VIII even though they do not explicitly refer to race. The test is whether or not the representation would be likely to convey to a reasonable person the idea that people of a particular race, color, religion, or national origin are or may be entering the neighborhood.[291]

It has been determined that owners of single-family homes are protected under the antiblockbusting provisions of Title VIII. The court has reasoned that because blockbusting primarily injures private homeowners, exempting them would be to deny protection to the group most in need of it.[292]

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288. A civil action must be commenced within 180 days after the alleged discriminatory housing practice occurred, 42 U.S.C. § 3612(a) (1970).

289. 42 U.S.C. § 3612(c) (1970).

290. 304 F. Supp. 1236 (N.D. Ga. 1969).

291. United States v. Mitchell, 327 F. Supp. 476 (N.D. Ga. 1971). This tactic is commonly known as blockbusting.

292. United States v. Mintzes, 304 F. Supp. 1305 (D. Md. 1969).

The courts have interpreted Title VIII broadly in terms of what conduct constitutes "pattern or practice" or raises an issue of "general public importance." In one case the court found that the requirement that a representation prohibited by Title VIII be made "for profit" is met as long as the person making the representation hoped to gain as a result.[293] An actual realization of profit is not necessary to sustain a charge of discrimination. In dealing with the issue of how many discriminatory acts on the part of an individual defendant are necessary to constitute a pattern or practice, another court found that any showing of more than one such act would support a pattern or practice charge.[294]

The Attorney General has been successful in enjoining the publication of discriminatory advertisements in a newspaper. The court of appeals upheld the reasoning that the issue was one of general public importance inasmuch as it would set a precedent for all other newspapers.[295]

Other important interpretations of the Fair Housing Act have come through private civil actions. These include the findings that property owners are responsible for the discriminatory acts of their rental agents because the duty of property owners not to discriminate cannot be delegated.[296]

Finally, under both Title VIII and the 1866 statute, whites as well as blacks have been granted standing to sue.[297] The importance of this particular construction can be seen in the fact that whites are often in

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293. Id. at 1311-12.

294. United States v. Gilman, 341 F. Supp. 891 (S.D.N.Y. 1972).

295. United States v. Hunter, 459 F.2d 205 (4th Cir.), cert. denied, 409 U.S. 934 (1972).

296. Collins v. Spasojcevic, Civil No. 73-C-243 (N.D. Ill., May 17, 1974).

297. Trafficante v. Metropolitan Life Insurance Co., 409 U.S. 205 (1972); Walker v. Pointer, 304 F. Supp. 56 (N.D. Tex. 1969); Sullivan v. Little Hunting Park, 396 U.S. 229 (1969).

a strategic position to detect discriminatory practices such as steering, blockbusting,[298] illegal solicitation of sales or other discriminatory practices that may not be apparent to the individual minority home or apartment seeker. In Trafficante v. Metropolitan Life Insurance Co., the Supreme Court stated, "While members of minority groups were damaged the most from discrimination in housing practices, the proponents of the (1968 fair housing) legislation emphasized that those who were not the direct objects of discrimination had an interest in ensuring fair housing, as they too suffered."[299]

On January 20, 1975, the Department of Justice made its first charge relative to sex discrimination, based on the 1974 Housing Act amendment to Title VIII. The charge relates to the refusal of an apartment management firm in Richmond, Virginia, to include a wife's income in determining the financial qualifications of apartment applicants.[300] In addition, the Department has filed its first suit alleging that the refusal to rent to citizens of certain specified foreign countries has the effect of discriminating on the basis of race, color, and national origin in violation of Title VIII.[301]

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298. Steering is the practice of showing prospective buyers listings only in a neighborhood or neighborhoods in which the residents are of the same color, race, or national origin as the prospective buyer. Blockbusting is a technique whereby real estate brokers perpetuate segregated neighborhoods by entering into a process, for commercial advantage, which artifically hastens or at least accelerates the rate of population turnover and the pace of racial change. Zuch v. Hussey, 394 F. Supp. 1028, 1047 (E.D. Mich. 1975).

299. 409 U.S. at 210.

300. United States v. Crestview Corp., Civil No. 74-0061-R (E.D. Va. June 13, 1975). The Department of Justice also filed an amended complaint alleging discrimination on the basis of sex in United States v. Davis, Civil No. 74-317-N (M.D. Ala., filed Jan. 30, 1975).

301. United States v. Dittmar Co., Inc., Civil No. 193-75-A (N.D. Va., filed Mar. 3, 1975).

Judicial construction of both the Civil Rights Act of 1866 and Title VIII of the Civil Rights Act of 1968 has molded these statutes into effective instruments to combat discrimination in housing. HUD, which has substantial Title VIII enforcement responsibilities, and State agencies that enforce State and local fair housing laws have a central role to play in the elimination of housing discrimination. Unfortunately, HUD and State agency performance with respect to fair housing law enforcement has not been satisfactory. Nor has there been a sufficient uniform degree of citizen involvement in efforts to monitor fair housing problems at the local level on a day-to-day basis. Continuing vigilance is needed by citizens and lawmakers in order to render illegal any practice that is not now covered by the law that is found to have the effect of skirting the law.

FEDERAL COURT LITIGATION AGAINST EXCLUSIONARY LAND USE AND OTHER PRACTICES AFFECTING LOWER-INCOME HOUSING LOCATION

Overview

In dealing with the issue of race and the location of low- and moderate-income housing, the courts have played a leading role in re-defining the rights of localities to use land use controls and other tactics to exclude the development of such housing within their borders or to prevent its construction on specific sites located in certain neighborhoods or sections. This is a comparatively recent role for the courts, not assumed until the late 1960's after discriminatory practices in locating federally-assisted housing for lower-income urban minorities had already resulted in confining this group to America's inner cities.

This result has obtained partly because of the nature of Federal requirements relative to the establishment of subsidized housing programs in a locality. Local discretionary powers in the areas of initiative, referenda, zoning, building codes, the issuance of building permits, and the like, have also been used in a discriminatory fashion.

Prior to 1968, the Federal Government required that all subsidized housing programs receive local government approval as a condition to their implementation in a locality.[302] By refusing to approve such programs, localities that did not want subsidized housing could prevent its construction within their borders. Furthermore, most local housing authorities are restricted by State legislation to operation within a single locality and cannot provide housing outside city limits unless they are able to secure cooperation agreements with surrounding jurisdictions. Even where housing authorities are authorized by State law to provide housing throughout a metropolitan area, the Federal requirement on securing cooperation agreements had to be met. Thus, suburban jurisdictions, through refusal either to sign cooperation agreements or to establish a public housing program of their own, have excluded subsidized housing from their communities.

Requirements imposed by Congress with respect to the rent supplement program have had the same effect. Communities were required either to adopt a workable program for community improvement, in conjunction with an urban renewal program, or give local official approval to a rent supplement program.[303] Again, suburban communities effectively excluded rent supplements by refusing to meet these requirements.

With the advent of the Housing and Urban Development Act of 1968, new pressures arose against the traditional practice of confining subsidized housing to minority areas. First, the tremendous increase in subsidized housing production called for by the act necessitated finding new land resources to accommodate the construction of housing units. Builders and developers often had to look in suburban areas where land is more plentiful than in inner-city minority areas. Secondly, the new 235 and 236 programs could operate freely throughout metropolitan areas without formal approval by local governments.

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302. 42 U.S.C. §§1410(h) and 1451(c) (1970).

303. 80 Stat. 141, ch. IV (1966).

In the face of these pressures, a number of localities prevented construction of lower-income housing by refusing to rezone land for multifamily housing, requiring minimum lot sizes and minimum square footage for single-family homes, refusing building permits, or denying water and sewer hookups for proposed subsidized housing. In addition, several communities have adopted slow growth or no growth policies to restrict residential development. Although a partial basis for these policies is community desire to preserve the environment and concern that additional building would overtax existing and proposed municipal services and facilities, another motivation has been the desire to exclude low- and moderate-income housing.

In a number of instances minorities, builders, and interested organizations have challenged the array of exclusionary devices employed by suburban jurisdictions. In a related development, minority tenants and applicants for low-rent public housing, or litigants on their behalf, have challenged traditional site selection procedures that localities have used to concentrate public housing in low-income minority areas. In several instances litigants have also challenged tenant selection policies that have caused segregation in federally-assisted housing.

A number of Federal court challenges to exclusionary land use practices have been successful. However, a recent report of the National Committee Against Discrimination in Housing (NCDH) and the Urban Land Institute (ULI) states that "the precise elements of a successful challenge are still uncertain and only dimly defined." Yet to be determined are "the specific circumstances (under which) localities will be held to have committed an unlawful act or engaged in unconstitutional conduct by preventing the construction of subsidized housing within their borders."[304] On the other hand, recent challenges dealing with discriminatory site selection have generally been successful. Most of these cases involve public housing. In fashioning remedies, the courts have been forceful and innovative in requiring new approaches to the problem of segregated housing.

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304. Fair Housing and Exclusionary Land Use, p. 33.

Cases dealing with exclusionary land use practices to prevent construction of federally-subsidized housing and with confinement of low-rent public housing to minority areas have all involved certain common factors. They have been brought in Federal court charging violations of Federal constitutional and statutory requirements. All have alleged that the conduct of a State or local government authority was racially discriminatory in purpose or effect. Proof of the latter allegation has been essential to the outcome of most of the cases in which minority and fair housing litigants have been successful.[305]

Exclusion of Federally-Subsidized Housing from Predominantly White Communities

In dealing with the issue of allegedly discriminatory use of initiative, referenda, and cooperation agreement requirements to prevent construction of subsidized housing in predominantly white neighborhoods or communities, the courts generally have upheld the constitutionality of these measures, while carefully distinguishing between the use of such procedures to approve or disapprove housing for lower-income people generally and their use to deny housing opportunities to minority poor.[306]

Thus, a district court has held that a cooperation agreement signed between the housing authority and the city of Cleveland is a valid and subsisting contract, and that the city cannot cancel the agreement through a subsequent city ordinance.[307] Through the ordinance, the

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305. Ibid., p. 38.

306. In two instances not involving construction of lower-income housing courts have found discriminatory the sue of initiatives and referenda. Reitman v. Mulkey, 387 U.S. 369 (1967), an initiative measure was struck down that would have added a provision to the State constitution to prevent the State from prohibiting racial discrimination in housing. In Hunter v. Erickson, 393 U.S. 385 (1969), a provision of the Akron, Ohio, city charter was invalidated that required that any fair housing ordinance must be submitted to a vote of the electorate before becoming effective.

307. Cuyahoga Metropolitan Housing Authority v. City of Cleveland, 342 F. Supp. 250 (N.D. Ohio 1972), aff'd sub nom. Cuyahoga Metropolitan Housing Authority v. Harmody, 474 F.2d 1102 (6th Cir. 1973).

city had attempted to block the construction of 2,500 units of public housing, much of which was to be located in the predominantly white west side of the city. This case is unique in that the city of Cleveland had earlier permitted the construction of public housing for low-income minorities on sites located in minority areas of the city. It was not until the housing authority attempted to secure sites for public housing in predominantly white areas that the city took the novel action of passing an ordinance that cancelled the existing cooperation agreement that had permitted the establishment of a public housing program in Cleveland. The court noted the racially discriminatory effect of the cancellation, pointing out that 75 percent of the persons on the housing authority's waiting list were black.

However, in James v. Valtierra[308] the Supreme Court upheld a California State law that requires approval by the voters of a local jurisdiction before the construction of low-rent public housing can take place. The Court viewed the case as one involving the issue of whether poor people are protected under the equal protection clause of the 14th amendment, not as a racial discrimination case, although in many instances minorities constitute the larger proportion of applicants for public housing.[309]

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308. 402 U.S. 137 (1971), rev'g Valtierra v. Housing Authority, 313 F. Supp. 1 (N.D. Cal. 1970).

309. The district court cited Hunter as controlling in this case. Justice Marshall, in dissenting from the majority in the Supreme Court, believed that the requirement should have been struck down because it discriminates against the poor. Citing Douglas v. California, 372 U.S. 353 (1963), which held that the 14th amendment prohibits States from discriminating between rich and poor as such in the formulation and application of their laws, Justice Marshall stated, "[i]t is far too late in the day to contend that the fourteenth amendment prohibits only racial discrimination; and to me, singling out the poor to bear a burden not placed on any other class of citizens tramples the values that the fourteenth amendment was designed to protect." 402 U.S. at 144.

The apparent meaning of Valtierra is that economic discrimination does not constitute a violation of the equal protection clause of the 14th amendment.[310] Thus, challenges to exclusionary land use practices must be able to show convincing evidence of discriminatory impact on racial minorities in order to prevail in Federal court.

How substantial this showing must be is not yet clear. On the one hand, a U.S. court of appeals appeared to disregard the effect that repeated refusals and failures of five predominantly white suburbs to enter cooperation agreements with a metropolitan housing authority have had on minorities eligible for public housing.[311] In a class action suit, plaintiffs argued that the cooperation agreement requirement was unconstitutional because low-income blacks were not residing in the defendant suburbs. A district court judge found that the actions of the five suburbs had the effect of excluding blacks and perpetuating racial discrimination. He ordered the housing authority to prepare a plan for scattered site public housing in each of the defendant suburbs.[312]

The appeals court found that under Valtierra municipalities have the right to determine whether or not they need and want low-income public housing and that there was no basis for inferring discrimination on the part of a municipality that had exercised a right recognized by the Federal cooperation agreement requirement. The substantial evidence showing disproportionate impact on minority poor did not affect the appeals court's decision. Decisions such as this notwithstanding, fair housing litigators are hopeful that Valtierra will be read narrowly as based on the special facts involved; i.e., the long history of referenda in California and the financial burdens that arise in connection with the traditional public housing program.[313]

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310. NCDH-ULI, Fair Housing, p. 35.

311. Mahaley v. Cuyahogha Metropolitan Housing Authority, 355 F. Supp. 1245 (N.D. Ohio 1973), 355 F. Supp. 1257 (N.D. Ohio 1973), rev'd, 500 F.2d 1087 (6th Cir. 1974), cert. denied, 419 U.S. 1108 (1975).

312. NCDH-ULI, Fair Housing, p. 17.

313. Ibid., p. 21. The referendum issue is again before the Supreme Court in Forest City Enterprises v. City of Eastlake, 41 Ohio St. 2d 187, 324 N.E.2d 740 (1975), prob. jur. noted, 44 U.S.L.W. 3031 (U.S. Oct. 13, 1975) (No. 74-1563).

In deciding whether or not to allow the construction of federally-subsidized or other types of housing in a community, local officials can exercise an array of discretionary powers. Such powers include zoning and granting zoning variances, issuing building permits and authorizing water and sewer hookups, restricting the types of housing that can be built, restricting the number of bedrooms per unit, requiring that all multifamily housing have certain amenities such as dishwashers and tennis courts, and requiring minimum lot and interior floor sizes and minimum frontage.

In cases that have dealt with the refusal of local officials to grant zoning, building permits, or water and sewer hookups for proposed federally-subsidized housing projects, courts generally have affirmed the exercise of discretionary powers of local officials. In so affirming, however, Federal courts have stipulated that such powers may not be exercised with racially discriminatory intent or effect.

In the leading case of Kennedy Park Homes v. City of Lackawanna,[314] which involved changes in zoning and denial of building permits and water and sewer hookups for a proposed subsidized housing project, the court found that the city had failed to show a "compelling governmental interest" that would overcome discriminatory denial to plaintiffs of the enjoyment of property rights. In another case involving refusal to

314. 318 F. Supp. 669 (W.D.N.Y. 1970), aff'd, 436 F.2d 108 (2d Cir. 1970), cert. denied, 401 U.S. 1010 (1971).

rezone a proposed site for 236 housing in Evanston, Illinois,[315] the district court ruled that a city cannot "refuse to rezone for black projects where under the same circumstances it would have granted a variance to an all-white project."[316]

Several cases in which discrimination has been alleged in the exercise of local land use controls have been unsuccessful in achieving reversals of actions that prevented the construction of proposed subsidized housing. In some of these cases the courts have rejected arguments that have shown substantial evidence that minorities were severely and disproportionately affected by the challenged actions.

For example, in Citizens Committee for Faraday Wood v. Lindsay,[317] the court rejected claims that the city of New York and its officials had denied funding for a 236 housing project in a predominantly white section of the Bronx because of community opposition based on racially discriminatory attitudes. The court found that the opposition was not rooted in discrimination to any significant degree and that, to the extent there was racial opposition, the city officials had not acted in response to it. The court imposed an extremely burdensome test of racially discriminatory effect by requiring a showing that a "policy or activity which has a racially discriminatory effect results from a prior pattern of discrimination or that such policies affect only racial minorities."[318]

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315. Sisters of Providence of St. Mary of the Woods v. City of Evanston, 335 F. Supp. 396 (N.D. Ill. 1971). See also United States v. City of Black Jack, note p. 85 above.

316. The court distinguished Valtierra by stating that the issue of voting rights injects a different constitutional ingredient than found in cases where a municipality attempts to prevent low- and moderate-income housing by refusing to rezone. 335 F. Supp. at 403.

317. 362 F. Supp. 651 (S.D.N.Y. 1973), aff'd, 507 F.2d 1065 (2d Cir. 1974), cert. denied, 95 S. Ct. 1679 (1975).

318. Id. at 659.

The ultimate outcome of attempts in Federal court to invalidate discretionary land use controls that block specific housing proposals is uncertain. If the standard of Faraday is applied in other circuits, future opponents of such controls will have a much more difficult task proving that discretionary zoning controls have discriminatory intent or effect.

When a specific proposal for such housing is not involved, Federal courts appear to view the problem of exclusionary zoning narrowly. Two Federal courts in the Second Circuit have severely limited the "standing" of nonresidents to challenge local and related Federal policies bearing on exclusionary land use controls.[319] These courts have rejected the concept that development policies in the suburbs have a direct impact on central cities sufficient to cause or threaten some real injury to the plaintiffs. In Evans v. Lynn,[320] the court stated that, "potential residents, as such, can claim at best only a remote speculative injury (which) cannot be made the cornerstone of standing."[321]

A demonstration that low- and moderate-income housing is not available in the defendant suburb, even for persons who work there, is not sufficient to show threatened or actual injury. Under Warth v. Seldin,[322] plaintiffs apparently must either suffer denial of an offer to purchase or lease housing or property in a defendant locality, have some interest in land within the town, or have some connection with a plan to construct housing therein for persons of the plaintiffs' class in order to pass the test for standing in Federal cases of this kind.

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319. Herbert Franklin, Memorandum 74-5, Potomac Institute, Washington, D.C., June 14, 1974, p. 1.

320. 376 F. Supp. 327 (S.D.N.Y. 1974). This case involved an attempt by low-income, minority nonresidents to restrain two Federal agencies from supplying funds to the town of New Castle, N.Y., for sewer facilities and swamp clearance. Plaintiffs alleged that exclusionary and discriminatory policies in New Castle denied minorities an equal opportunity to benefit from grants.

321. Id, at 333.

322. 95 S.Ct. 2197 (1975).

Discriminatory Site Selection and Tenant Assignment in Federally-Assisted Housing

Judicial attacks on exclusionary zoning and other discretionary land use powers of local government have aimed primarily at the invalidation of practices that prevent the inclusion of low- and moderate-income housing in the residential development of suburban communities. Another line of attack has been instituted in Federal courts regarding local housing authority selection of locations for public housing in communities that have not attempted to exclude such housing outright, but that have confined its location to areas of minority residence.

The seeking of judicial protection against discrimination in the selection of locations for federally-assisted, lower-income housing is comparatively recent in origin. During the 1960's only five cases had reached the courts. In contrast, cases dealing with segregated occupancy in public housing had been brought in the previous decade.[323]

Despite the rulings in the early tenant selection cases and the establishment of Federal administrative requirements to prevent segregation through site and tenant selection, many local authorities continued practices that had this effect. In a number of instances, HUD itself failed to impede these practices. Particularly in the area of site selection, HUD frequently approved project locations in minority areas without questioning in depth a locality's assertion that no other suitable locations were available.

In dealing with the impact of public housing site selection on racial patterns of residence, Federal courts have invalidated local government practices that have enforced racial segregation. In Gautreaux v. Chicago

323. Detroit Housing Commission v. Lewis, 226 F.2d 180 (6th Cir. 1955); Heyward v. Public Housing Administration, 238 F.2d 689 (5th Cir. 1956).

Housing Authority, Hicks v. Weaver, El Cortez Heights Residents and Property Owners Association v. Tucson Housing Authority and Banks v. Perk,[324] the courts found that deliberate racial segregation resulting from site selection and, in Gautreaux, tenant selection as well, violated the 14th amendment. In so holding the courts have extended a principle that had been established earlier in school segregation cases, and applied to earlier public housing tenant selection cases.

Of greater significance are the remedies the courts have ordered to overcome segregation in public housing. In Banks, the court enjoined the Cuyahoga Metropolitan Housing Authority from planning future public housing in black neighborhoods of Cleveland and ordered the authority to consider sites in the predominantly white neighborhoods of the city's west side.

In Gautreaux, the court, in an extensive and detailed order, required the Chicago Housing Authority to take affirmative action to integrate its public housing by locating most future units in white areas and by assigning black and white tenants to these projects in accordance with a strict ratio.[325] In so ordering, the court held that purposeful integration is a necessity to overcome governmentally-sanctioned or enforced segregation. An alternative remedy, the banning of all racial classifications in selecting housing sites, bore no guarantee that existing, segregated living patterns would not continue. This lack of affirmative guarantee was justification in the court's mind for requiring actions that must use racial classifications to achieve integration.

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324. Gautreaux v. Chicago Housing Authority, 296 F. Supp. 907 (N.D. Ill. 1969). Hicks v. Weaver, 302 F. Supp. 619 (E.D. La. 1969). El Cortez Heights Residents and Property Owners Ass'n v. Tucson Housing Authority, 10 Ariz. App. 132, 457 P.2d 294 (1969). Banks v. Perk, 341 F. Supp. 1175 (N.D. Ohio 1972), aff'd in part, rev'd in part, 473 F.2d 910 (6th Cir. 1973).

325. 304 F. Supp. 736 (N.D. Ill. 1969), aff'd, 436 F. 2d 306 (7th Cir. 1970), cert. denied, 402 U.S. 922 (1971). The employment of a racial classification in this order has sparked subsequent debate as to whether racial classifications of any type are permissible under the 14th amendment. The Supreme Court has upheld some racial classifications but has stipulated that they must not be arbitrary or unrelated to a legitimate government purpose and that there must be a strong, overriding justification for their use. Buehl, Peel, and Pickett, "Racial Discrimination in Public Housing," Stanford Law Review, vol. 23, p. 126. (1970).

Subsequent to the court's order in Gautreaux, the Chicago City Council repeatedly refused to approve sites for public housing in white neighborhoods. Hence, in 1972, the district court ordered the Chicago Housing Authority to ignore local legislative requirements, which called for city council approval of public housing sites, and to acquire directly property in white sections of the city. In affirming the order, the U.S. court of appeals rejected the defendants' argument that, under Valtierra, the local legislative requirement for city council approval is valid.[326] The court stated that in Valtierra the Supreme Court could not find that a seemingly neutral law was, in fact, aimed at a racial minority. In Gautreaux, however, the court found "that only race could explain the defendant's actions and subsequent inaction."[327]

Because the city of Chicago continued to refuse to build any additional public housing within the city's limits, plaintiffs requested further relief. They asked the court to extend the original order to require the construction of public housing in Chicago's suburbs for low-income families currently residing in the city.[328]

Although metropolitan relief was denied by the lower court, the appeals court ruled that the record in the protracted case of Gautreaux makes it necessary and equitable that any remedial plan to overcome segregation in Chicago's public housing must be on a suburban or metropolitan basis.[329]

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326. 342 F. Supp. 827 (N.D. Ill. 1972), aff'd, 480 F.2d 210 (7th Cir. 1973), cert. denied 414 U.S. 1144 (1974).

327. 480 F.2d at 215.

328. Gautreaux v. Chicago Housing Authority and Lynn, 363 F. Supp. 690 (N.D. Ill. 1973), rev'd, 503 F.2d 930 (7th Cir. 1974).

329. 503 F.2d at 937.

The court found that the record in Gautreaux indicated that there had been housing discrimination in Chicago's suburbs and that the effects of this discrimination had caused segregation in housing throughout the metropolitan area. The court held that the city portion of the metropolitan plan could go forward while the suburban phases were perfected. The case was remanded to the district court for the adoption of a comprehensive metropolitan area plan that would undo the system of segregated public housing in and around the city of Chicago and increase the supply of dwelling units as rapidly as possible. As of October 1975, Gautreaux is before the United States Supreme Court.[330]

In its brief before the Supreme Court the Government has attempted to extend the holding of Milliken v. Bradley,[331] in which a metropolitan remedy for central city school segregation was denied, to the provision of low and moderate income housing. Two key factors, however, were present in Milliken but are absent in Gautreaux.[332] In Milliken the Court was unable to find any of the defendants responsible for segregation in the schools of Detroit. In Gautreaux, on the other hand, the Department of Housing and Urban Development is deeply implicated in the creation of segregated housing patterns. In Milliken the Court did not see any feasible administrative remedy that could be implemented on a metropolitan-wide basis. But with respect to housing HUD has the authority under the section 8 program to provide housing in jurisdictions that do not themselves conduct housing programs.

In one other case, a court has ordered a plan for public housing location having metropolitan impact, for the purpose of overcoming the effects of segregation in central city public housing projects. In Crow

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330. Hills v. Gautreaux, cert. granted, 421 U.S. 962 (1975) (No. 74-1047). In January 1975, the Staff Director of the Commission wrote the Solicitor General in support of the appeals court decision, urging that Supreme Court review not be sought. John A. Buggs, Staff Director, U.S. Commission on Civil Rights, Letter to Robert H. Bork, Solicitor General, U.S. Dept. of Justice, Jan. 20, 1975.

331. 418 U.S. 717 (1974).

332. See pages 107-08 below.

v. Brown,[333] the court held that the Atlanta Housing Authority had followed by a pattern of residential segregation by locating public housing projects exclusively in areas of minority concentration in the city of Atlanta. The court directed the housing authority and officials of Fulton County (in which the city of Atlanta is located) to join in locating other sites for public housing in the county outside areas of minority concentration.

In an important case dealing with Federal administrative procedures that have the effect of intensifying residential segregation, a U.S. court of appeals defined Federal responsibility in the site selection process. At issue in Shannon v. Department of Housing and Urban Development[334] was the location of a FHA-subsidized project. HUD's original plan provided for moderate-income homeownership. When the plan was revised to provide project housing for low-income families through the rent supplement program, residents living near the project site opposed the plan. The court ruled that HUD was obligated under the Civil Rights Acts of 1964 and 1968 to consider the potential impact that location of a particular housing project would have on patterns of residential segregation in a community. Noting that HUD must act affirmative to achieve fair housing, the court stated that HUD must weigh all alternatives and, if it finds that a site in a minority area is approvable, it must show that the "need for physical rehabilitation or additional minority housing at the site in question clearly outweighs the disadvantage of increasing or perpetuating racial concentration."[335]

Shannon and Gautreaux have played a major part in HUD's development of new site selection criteria for federally-subsidized housing. These were released in final form in February 1972. Under the old site selection criteria for public housing, HUD frequently sanctioned a local site selection process that made little effort to justify the location of

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333. 332 F. Supp. 382 (N.D. Ga. 1971), aff'd per curiam, 457 F.2d 788 (5th Cir. 1974).

334. 436 F.2d 809 (3d Cir. 1970), vacating 305 F. Supp. 205 (E.D. Pa. 1969).

335. 436 F.2d at 822.

public housing in minority areas. Under the new criteria, however, HUD required substantial proof that the construction of federally-assisted housing on sites located outside minority areas was not possible.

Recent Federal court scrutiny of tenant selection policies in federally-assisted housing has delineated local and Federal Government responsibility beyond the basic prohibition not to segregate. In Otero v. New York City Housing Authority,[336] plaintiffs were minority urban renewal displacees. They challenged the housing authority's policy of disregarding its own regulation giving former residents of an urban renewal area first priority for units in public housing to be constructed in the area. The housing authority claimed that under Federal fair housing law, it was obligated to promote racially-balanced housing. If former residents were given preference, the new public housing would not have well-mixed occupancy patterns. The court of appeals upheld the argument that the authority's duty to bring about racial integration in public housing takes precedence:

> We do not view that duty as a "one-way street" limited to introduction of non-white persons into a predominantly white community. The authority is obligated to take affirmative steps to promote racial integration even though this may in some instances not operate to the immediate advantage of some non-white persons. 337

Federal Programs as Instruments of Minority Removal

Federal programs, and particularly federally sponsored highways and urban renewal, have in a number of instances been used as tools to displace or remove minorities from certain neighborhoods of a community or from the entire community itself. One of the most extreme cases to reach the courts occurred in the city of Hamtramck, Michigan.[338] A

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336. 344 F. Supp. 737 (S.D.N.Y. 1972), 354 F. Supp. 941 (S.D.N.Y. 1973), rev'd 484 F.2d 1122 (2d Cir. 1973).

337. 484 F.2d at 1125.

338. Garrett v. City of Hamtramck, 335 F. Supp. 16 (E.D. Mich. 1971), 357 F. Supp. 925 (E.D. Mich. 1973), 503 F.2d 1236 (6th Cir. 1974).

district court found that HUD and the city had violated the constitutional rights of black, low-income plaintiffs who were displaced as the result of a "planned program of population loss."[339] The black population of Hamtramck, a predominantly Polish American community surrounded by the city of Detroit, had fallen from 14.4 to 8.5 percent between 1960 and 1966, a decline due largely to plans carried out under the Wyandotte urban renewal project.[340] To negate the effects of the conscious plan for black removal, the court ordered the city to eliminate discrimination from the project and provide replacement housing for persons to be displaced. HUD was enjoined from providing assistance to the urban renewal project until the relocation plan had received the approval of HUD and the court.

Although the decisions of the Federal courts do not yield a coherent, unitary set of principles relative to land use and the provision of lower-income housing, several trends are evident. Of these, two are of particular importance. First, in dealing with the issue of racial segregation in subsidized housing, the courts in Gautreaux and Otero have defined equal housing opportunity for low-income minorities as requiring integrated occupancy. These courts have recognized that impartial procedures for tenant selection are not adequate to achieve fair housing.

Second, the need for a metropolitan approach to the provision of low-income housing has been found essential to the alleviation of segregation caused by discriminatory practices of the local housing authorities in Chicago and Atlanta. In many other metropolitan areas, low-income subsidized housing is also segregated, with the housing for poor minorities concentrated in minority areas of central cities. Although the factors leading to segregation may differ, the effects and the need for a metropolitan approach to solving them are the same.

If housing legislation and fair housing law are to work as related parts of a single national policy, as viewed by the Shannon court, housing must be provided for low-income minorities in nonminority neighborhoods

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339. 335 F. Supp. at 19.

340. 503 F.2d at 1246.

throughout metropolitan areas. Missing from national policy at this time, however, is an explicit requirement that communities abrogate exclusionary zoning regulations and building codes and implement affirmative laws and procedures for the inclusion of lower-income housing. In the absence of this requirement, HUD could, at the very least, have established affirmative guidelines under Title VIII which would lead communities to examine zoning and other laws or practices that inhibit development of housing opportunities for all segments of the population. The failure to take the initiative in this area is a serious shortcoming of HUD's implementation of Title VIII.

The Effect of Residential Segregation on the Public Schools

Because school district boundaries often follow the boundaries of municipalities and because students are often assigned to a school in their own community, residential racial segregation between municipalities in a metropolitan area and within municipalities often has resulted in segregation in the schools. In some areas residential segregation is so massive and complete that simple remedies for school segregation are difficult to find.

The relationship between segregated housing and segregated schools was recognized by the lower court in Milliken v. Bradley.[341] In that case, which was concerned with segregation in the Detroit school

341. 338 F. Supp. 582 (E.D. Mich. 1971), 345 F. Supp. 914 (E.D. Mich. 1972), aff'd in part, vacated in part, 484 F.2d 215 (6th Cir. 1973), rev'd 418 U.S. 717 (1974).

system, the district court found that "/g/overnmental actions and inaction at all levels, Federal, state and local, have combined with those of private organizations, such as loaning institutions and real estate associations and brokerage firms, to establish and to maintain the pattern of residential segregation throughout the Detroit metropolitan area."[342] The Court further recognized that "just as there is an interaction between residential patterns and the racial composition of schools, so there is a corresponding effect on the residential pattern by the racial composition of schools."[343] As a result of these findings the district court ordered into effect a metropolitan school desegregation plan. The United States Supreme Court, however, reversed this order, holding that, on the facts that had been proved in this case, the suburban school districts could not be held responsible for segregation within the Detroit school system.[344]

The Supreme Court's decision in Milliken leaves open the possibility that, when lawyers are able to establish a more direct connection between suburban exclusionary practices and resulting segregated schools, metropolitan relief will be granted. Until then, substantial progress in the desegregation of schools of many metropolitan areas will only be achieved when housing patterns are substantially desegregated.

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342. 418 U.S. at 724 quoting 338 F. Supp. 587.

343. Id.

344. 418 U.S. at 745.

STATE INITIATIVES ON EXCLUSIONARY LAND USE PRACTICES

STATE LITIGATION

In State cases, litigants who have challenged exclusionary land use practices have aimed at removing local requirements that have the effect of severely limiting or excluding residence of lower-income families. Most of these cases do not involve a specific proposal for lower-income housing or allegations of racial discrimination. Instead, they are concerned with land use practices that litigants believe violate State constitutional and statutory provisions. Nearly all of the State court cases have been brought in Pennsylvania and New Jersey, where courts have given careful scrutiny to restrictive land use practices that limit residential development, particularly of lower-income housing, and hamper a regional approach to meeting housing needs.

In National Land and Investment Company v. Kohn,[345] the Pennsylvania Supreme Court stated that "/z/oning is a means by which a governmental body can plan for the future--it may not be used as a means to deny the future."[346] In striking down a 4-acre minimum lot size requirement, the court stated that, "a zoning ordinance whose primary purpose is to prevent the entrance of newcomers in order to avoid burdens, economic or otherwise, upon the administration of public services and facilities cannot be held valid."[347]

345. 419 Pa. 504, 215 A.2d 597 (1965).
346. 215 A.2d at 610.
347. Id. at 612.

In Appeal of Kit-Mar Builders, Inc.,[348] the Pennsylvania supreme court dealt with the regional effects of local zoning, and found that:

> It is not for any given township to say who may or may not live within its confines, while disregarding the interests of the entire area. If Concord Township is successful in unnaturally limiting its population through the use of exclusionary zoning regulation, the people who would normally live there will inevitably have to live in another community, and the requirement that they do so is not a decision that Concord Township should alone be able to make.[349]

In recognizing the need for a regional approach to housing needs, the Commonwealth Court of Pennsylvania has also dealt with the issue of "fair share" housing distribution.[350] The township of Williston originally had an ordinance that prohibited the construction of apartments. When a developer of a proposed multifamily complex applied for a zoning variance on land that had been zoned for single-family use, the township amended the ordinance to regulate apartment use and then denied the variance. Justifying the amended ordinance, the township attempted to show that it was dealing realistically with the need for all townships in the metropolitan area to accept their "fair share" of all types of housing and income groups.

Both the lower court and the Commonwealth Court of Pennsylvania ruled against the township, finding the ordinance, both before and after amendment, unconstitutional. The township would still be able to exclude those portions of the population it did not want. The court acknowledged that it is difficult to define the point at which a community will have performed its "fair share" in providing housing

348. 439 Pa. 466, 268 A.2d 765 (1970).

349. 268 A.2d at 768-69.

350. Township of Williston v. Chesterdale Farms, Inc., 7 Pa. Commw. 453, 300 A.2d 107 (1973), aff'd, 341 A.2d 466 (1975).

for all groups. Nonetheless, the court found that "/f/air share is much like the word 'reasonable'--difficult of definition but still capable of indicating what is expected within bounds which only individual cases can define." [351] The court concluded that Williston did not meet the fair share test.

While demonstrating similar concerns, New Jersey courts have also shown a growing reluctance to sanction fiscal zoning practices which have the effect of excluding certain kinds of people by preventing development that would further burden taxpayers.

In Molino v. Borough of Glassboro, [352] the New Jersey Superior Court struck down a multifamily housing ordinance that severely limited the number of units with two or more bedrooms and required the inclusion of expensive facilities such as swimming pools, tennis courts, and air conditioning. Such restrictions eliminate the possibility of providing housing for lower-income families. The court ruled that the ordinance was inconsistent with the general welfare of the community and a violation of the equal protection clause of the 14th amendment. The court stated:

> the effort to establish a well balanced community does not contemplate the limitation of the number in a family by regulating the type of housing.... There is a right to be free from discrimination based on economic status. There is also a right to live as a family, and not to be subject to a limitation on the number of members of that family in order to reside in any place. 353

In two other cases, the New Jersey Superior Court has dealt directly with zoning ordinances designed to exclude multifamily housing that would benefit lower-income groups. In Southern Burlington County NAACP v. Township of Mount Laurel, [354] the court invalidated a zoning ordinance and required the municipality to develop a plan for meeting the housing

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351. 300 A.2d at 116.

352. 116 N.J. Super. 195, 281 A.2d 401 (1971).

353. 281 A.2d at 405.

354. 119 N.J. Super. 164, 290 A.2d 465 (1972).

needs of low- and moderate-income persons residing or working in the township.[355]

In Oakwood at Madison, Inc. v. Madison,[356] the Superior Court of New Jersey invalidated a zoning ordinance that it found had failed to promote a reasonably balanced community in accordance with the general welfare. The court stressed the obligation of communities to meet the housing needs of their own residents as well as those of the region, including those of lower-income people. The court found a cause-and-effect relationship between exclusionary suburbs and inner city ghettos, emphasizing that exclusionary zoning practices have been influential in perpetuating inner-city deterioration and congestion.

In two instances in which plaintiffs have brought suit against a group of municipalities in an attempt to demonstrate the adverse impact of exclusionary land use practices on a regional basis, courts in both Pennsylvania and New Jersey have dismissed the complaints on the principal ground of lack of justiciability. The courts reasoned that the issues were political in nature and more appropriate for legislative consideration.[357]

Challenges to Time Zoning.

In recent years several communities have attempted to control growth by devising zoning ordinances that restrict the residential use of land over a long period of time. These ordinances attempt to stop or slow down residential growth for purposes of maintaining the character of the community or to assure that public facilities and services can be expanded adequately to serve the needs of additional residents in the community.

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355. Aff'd with modifications, ____N.J.____, A.2d____, appeal dismissed, ____U.S.____ (1975).

356. 117 N.J. Super. 11, 283 A.2d 353 (1971).

357. Commonwealth of Pennsylvania v. County of Bucks, Ct. E.P. of Bucks Co., 22 Bucks Co. Rep. 179 (1972); appeal dismissed, 8 Pa. Commonwealth 295, 302 A.2d 897 (1973); aff'd, Pa. S. Ct., Aug. 1, 1973, cert. den. 414 U.S. 1130 (1974). Baylis v. Borough of Franklin Lakes, Civil No. L-33910-71-P.W. (N.J. Super. Ct. 1974).

In a leading case, an ordinance of this kind developed by the town of Ramapo, New York, has been upheld by the New York Court of Appeals.[358] The court found that there is a rational basis for phased growth "where it is clear that the existing physical and financial resources of the community are inadequate to furnish the essential services and facilities which a substantial increase in population requires...."[359]

Plaintiffs attempted to show that an ordinance extending 18 years into the future would preclude development of low- and moderate-income multifamily housing in Ramapo, which had taken only limited steps to provide such housing in the past. The court's majority apparently believed that Ramapo had already provided an acceptable response to this need and was not concerned with the impact the ordinance might have on future development in the region.[360]

In Construction Industry Association of Sonoma County v. City of Petaluma,[361] litigants challenged elements of Petaluma's zoning, planning, and other ordinances that restrict residential construction. The district court struck down an ordinance that limited multi-family residential construction to 2500 units over a period of 5 years, ruling that the

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358. Golden v. Town Planning Board of Ramapo, 30 N.Y. 2d 359, 285 N.E. 2d 291 (1972), appeal dismissed, 409 U.S. 1003 440 (1972).

359. 285 N.E.2d at 304. Plaintiffs did not contest Ramapo's allegations regarding inadequate existing facilities, nor did the court appear to examine the adequacy of Ramapo's financial resources to support population growth at some "fair" level. Had the court examined which taxpayers benefit financially from slow growth policies, it might have found that Ramapo had as adequate fiscal resources to finance urbanization as other localities throughout the New York metropolitan area, but is simply unwilling to expend them. See Herbert Franklin, Controlling Urban Growth--But For Whom (Washington, D.C.: Potomac Institute, 1973).

360. There are 50 units of public housing for the elderly in Ramapo and 49 units of family public housing. At the time of the suit, all elderly tenants were white and fewer than 10 units in the family housing were occupied by blacks. Under the ordinance, no further public housing is planned; there is no FHA-subsidized housing. Some additional, privately-sponsored housing may be provided for the elderly, but the capital program does not schedule the investment of any public resources to simulate or assist State- or federally-subsidized housing. Franklin, Controlling Urban Growth, p. 15.

361. 375 F. Supp. 574 (N.D. Cal. 1974), rev'd, No. 74-2100 (9th Cir. Aug. 13, 1975).

ordinance violated the constitutional right to travel.[362] The Court of Appeals, however, upheld the ordinance, sidestepping the right to travel issue by asserting that appellees (homebuilders, the builders' association, and individual landowners) had no standing to assert a claim on behalf of potential purchasers or renters of housing that would be produced in Petaluma, were growth controls not enforced. The court then stated that "the concept of the public welfare is sufficiently broad to uphold Petaluma's desire to preserve its small town character, its open spaces and low density of population, and to grow at an orderly and deliberate pace." [363]

In contrast to the district court's analysis in Petaluma, the right to travel issue was not analyzed in depth by the court in Ramapo. As Herbert Franklin of the Potomac Institute has stated,

> when a locality proposes not to close the door altogether but to keep it somewhat ajar, as it were, the question arises as to who is able to stand in line waiting to go through. The Ramapo court was not concerned, or was not aware, that those in line to enter Ramapo will be mainly people able to afford expensive houses on large lots. 364

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362. "A zoning regulation which has as its purpose the exclusion of additional residents in any degree is not a compelling governmental interest, nor is it one within the public welfare." 375 F. Supp. at 586. The constitutional right to travel was used in an earlier case to prevent California from excluding certain groups during the Great Depression. Edwards v. California, 314 U.S. 160 (1941). More recently it has been cited as the basis for striking down residency requirements for welfare benefits, Shapiro v. Thompson, 394 U.S. 618 (1969).

363. Slip opinion, pp. 17-18.

364. Franklin, Controlling Urban Growth, p. 24.

STATE AND LOCAL LEGISLATIVE INITIATIVES

State and local legislative initiatives to disperse low- and moderate-income housing have centered around the creation of regional housing allocation plans, State housing finance agencies, and reform of local zoning practices. All three developments are recent in origin.

Housing Allocation Planning

In 1968, Federal legislation for the first time required the inclusion of a housing element in activities funded through HUD's comprehensive planning program. Prior to that time, planners had not been concerned with the dispersal of various types of housing throughout metropolitan areas. Comprehensive planning had little or no effect on Federal and State programs to house persons unable to compete for shelter in the private market.[365]

Under the new Federal requirement, planners began to formulate plans designed to allocate dwelling units by price and type suited to the needs of various elements of the population. The plans have been intended to maximize choice of area of residence and to provide, in particular, for the dispersal of low- and moderate-income housing as a part of planned growth in a region or metropolitan area.

The first, and one of the most notable, allocation plans was developed for the metropolitan area of Dayton, Ohio, by the Miami Valley Regional Planning Commission in 1970.[366] The plan formulates five-year subsidized housing construction goals for each of five counties within the jurisdiction of the commission. The counties were divided into analysis sectors, their size reflecting respective degrees of urbanization, and each sector's fair share of the countywide subsidized housing goals was calculated, based on a formula that included criteria for equal shares,

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365. Ernest Erber and John P. Prior, Housing Allocation Planning: An Annotated Bibliography (Washington, D.C.: Council of Planning Librarians Exchange Bibliography #547, March 1974), p. 2.

366. Miami Valley Regional Planning Commission, A Housing Plan for the Miami Valley Region (Dayton, Ohio: July 1970).

proportionate shares of households eligible for subsidized housing, poverty, local educational funding capacity, and overcrowded schools.[367] Since 1970, metropolitan housing allocation plans have been developed in approximately 30 other areas. Some plans, such as the interim master plan for Middlesex County, New Jersey,[368] include allocations for all types of housing to be developed within a specified time.

From 1970 through 1972, HUD strongly favored the development of housing allocation plans as a means of satisfying the housing element requirement of the comprehensive planning program. With the suspension of the major subsidy programs in January 1973, however, HUD's empahsis on fair share plans declined sharply. The workability of such plans was largely subverted by the moratorium.[369]

Under the new Housing and Community Development Act of 1974, it is not clear what role such plans will play in the development of low- and moderate-income housing in metropolitan areas. Under Title I, sec. 104(e) of the act, applications for community development bloc grants must be submitted to areawide planning agencies for review and comment prior to HUD approval. Presumably, the areawide planning agency would assess the extent to which local housing assistance plans in its area conform to a regional housing allocation plan, if one has been developed. The intended impact of the agency's assessment is unclear, however. HUD is not required to disapprove a local housing plan on the basis of a negative areawide agency review. It is the intention of Congress also that localities not be "rigidly bound" by comprehensive plans, although "careful consideration" should be given to them.[370] Thus, regional housing allocation plans may or may not be disregarded under the new program.

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367. Erber and Prior, Housing Allocation Planning, p. 6.

368. Middlesex County Planning Board Interim Master Plan (New Brunswick, N.J.: Sept. 1970).

369. Erber and Prior, Housing Allocation Planning, p. 3.

370. H.R. Rep. No. 93-1114, 93d Cong., 2d sess., 6-7 (1974).

Housing allocation plans have their limitations, one of which is that the participation of local jurisdictions in implementation of the plan is strictly on a voluntary basis. Each community covered by a plan retains the power to block development of lower-income housing, either outright or through such devices as land use controls. Thus, the success of a plan depends on the cooperation of all jurisdictions within a metropolitan or regional area.

State Housing Finance Agencies

As of December 1974, 31 States had created housing finance agencies (HFA's) that have as one express purpose the development of low- and moderate-income housing.[371] State HFA's are involved in a wide array of programs, including financing of construction, insurance, and secondary market activities. They have financed more than 110,000 units of single-family and multifamily housing.[372]

Increasingly, State HFA's are being looked on as a major participant in providing low-income housing. At the same time, however, they are faced with a shortage of financial resources for such housing and are dependent on bond financing and Federal low- and moderate-income housing subsidies.[373] Because financing for low-income housing is difficult to provide, a number of HFA's have turned to programs for moderate- to middle-income groups during the current period of tight money.[374] Hope for further involvement in the provision of lower-income housing rests with the new Federal section 8 program of housing assistance payments.

Requirements and powers vary among HFAs with respect to the provision of lower-income housing. In Ohio, for example, 20 percent of all projects

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371. Jane A. Silverman, State Housing Finance Agencies: Future Prospects, Present Problems, Housing and Development Reporter, vol. 2, no. 14 (Dec. 2, 1974), p. 717.

372. Ibid., p. 718. Twenty percent of the 236 units were produced by HFA's prior to the 1973 moratorium.

373. Ibid., p. 718.

374. The bond market has exerted pressure to get HFA's to develop projects with less risk than those that provide housing for lower-income families.

of more than 20 units must be set aside for low-income families.[375] In New York, the Urban Development Corporation (UDC) was given the power to bypass local zoning ordinances, building codes, and subdivision regulations in selecting sites for and constructing low- and moderate-income housing. Despite the restraint followed by UDC in exercising these powers, the New York legislature curtailed them substantially in June 1973 by permitting localities to veto UDC projects.[376]

The UDC experience has shown that HFA's that must deal with the conflicting goals of providing lower-income housing and overcoming local resistance to such housing will tend to emphasize production rather than the location of sites. UDC has not been active in suburban communities and has generally placed projects where they were likely to be highly acceptable to surrounding residents.[377] Thus, UDC has yet to be an effective tool for the dispersal of low- and moderate-income housing.

Legislative Reform of Zoning

Several State legislatures enacted reforms of local zoning practices in an effort to curb exclusionary activity and provide for the development of low- and moderate-income housing in suburban areas. The Massachusetts statute[378] provides streamlined procedures for developers of subsidized housing. A single application may be submitted directly to the local board of zoning appeals in lieu of separate applications to various local boards such as the board of survey, the board of health, the planning board, etc. The board of zoning appeals must evaluate the application based on a statutory allotment of lower-income housing to be developed in each locality. No single locality must absorb more than its quota of such housing.

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375. Ibid., p. 718.

376. Equal Opportunity, p. 53.

377. Ibid., p. 53. UDC approached bankruptcy during the winter of 1974. As of October 1975 the Corporation's financial problems were still unresolved. New York Times, Oct. 16, 1975, p. 3.

378. Mass. Gen. Laws Ann., ch. 4013 §20-23 (1971).

Chapter 2

MINORITY MIGRATION AND URBAN RESIDENTIAL SEGREGATION

Between 1950 and the present, there has been a radical change in the residential locations of the black population in the United States. Blacks have migrated in large numbers from the South to the northern and western regions of this country. Before the Second World War, black migration streams had been directed for the most part toward the major cities found along the Atlantic seaborad, those fringing the lower Great Lakes, and a few major river cities. Given the new economic opportunities associated with the war, new migration paths to the Pacific Coast began to emerge, and for the first time large numbers of blacks began to abandon the South in favor of Pacific Coast urban centers.[379] During the same period, noticeable changes occurred in the residential locations of other minority groups, although not on the scale found among blacks.

During the course of urban migration, most minorities have been confined to segregated neighborhoods in central cities. Severe residential segregation and isolation between races and ethnic groups is a marked feature of virtually every metropolitan area in which minorities reside.

A relatively small number of blacks have moved from central cities to suburban communities. Suburban blacks are more often found in integrated neighborhoods, although frequently when blacks have moved to suburban subdivisions, those neighborhoods, too, have become black enclaves. In some instances black suburbanization has simply been an extension of black residential concentration in central city neighborhoods that border suburban communities.

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379. Harold M. Rose, "The Spatial Development of Black Residential Subsystems," Economic Geography, vol. 48, no. 1 (January 1972), p. 44.

MINORITY MIGRATION

The dramatic shift in the overall geographic location of the black population is documented in census data[380] showing that, since 1960, five States--California, New York, Illinois, New Jersey, and Michigan--have each added more than 100,000 blacks to their population through migration. Seven southern States have had black migration losses exceeding 100,000--Mississippi, Alabama, South Carolina, North Carolina, Louisiana, Arkansas, and Georgia. By 1970, Mississippi had lost nearly one-third of its 1960 black population, and in Alabama, South Carolina, and Arkansas as well, the black migration losses exceeded the natural gains[381] in black population.[382] In 1970, 52 percent of the black population lived in the South, 20 percent lived in the Northeast, 20 percent in the North Central region, and 8 percent in the West.

During the period from 1960 to 1966, black migration accounted for an estimated 34 percent of metropolitan growth.[383] Since 1966, however, there has been an apparent slowing in the rate of movement of blacks out of the South. In addition to the direct impact black migration has had on urban black population growth, it is indirectly responsible for the substantial natural increases in the size of black metropolitan populations that occurred throughout the mid-sixties. From 1950 to 1960, one-half of the black population in the 25 to 29 age group abandoned the Deep South.[384]

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380. Except for citations to other sources, data for this chapter are taken from the 1970 Census of Population and Housing, Series PHC (2) (March 1971), U.S., Department of Commerce.

381. The gain in population resulting from more births than deaths.

382. The census data are for Negro and other races. In most States, blacks are the overwhelming majority in this group. Other races were Asian and Native American.

383. W. Alonso, "What are New Towns For?" Urban Studies, vol. 7 (February 1970), p. 42, cited in Rose, "Spatial Development," p. 46.

384. A.F. Taeuber and K.E. Taeuber. Negroes in Cities (Chicago: Aldine Publishing Co., 1965), cited in Rose, "Spatial Development," pp. 46-47.

Changes in the geographic distribution of other minority groups have also occurred during the last two decades. Large numbers of persons of Puerto Rican origin have migrated from Puerto Rico to the larger cities of the East Coast, such as New York and Philadelphia. Substantial numbers of Cubans have immigrated from Cuba to the United States, settling frequently in southern Florida, in particular Dade County, and to a lesser extent in cities along the Atlantic Coast. However, the greater proportion of persons of Spanish origin (primarily Mexican American) is still found in five Southwestern States; these States plus New York account for three-fourths of the Spanish origin population in the United States.[385]

All States showed growth[386] in Native American population, over half of the growth being in New York, Minnesota, Michigan, Illinois, Oklahoma, Arizona, California and New Mexico. Just over half of the Native American population now lives in five States: Oklahoma, Arizona, California, New Mexico, and North Carolina.

URBANIZATION

The greater proportion of all minority populations (except Native Americans) lives in urban areas. The growth in urbanization has been most dramatic for blacks and Native Americans, although the latter remain largely rural. Over the past two decades, the proportion of black population in metropolitan areas has been rising considerably faster than the proportion of white population in these areas (table 2).

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385. Approximately 86 percent of the persons of Mexican origin are in the Southwest; 86 percent of persons of Puerto Rican origin are in the Northeast; 85 percent of the persons of Cuban origin are in the Northeast and the South, and predominantly in the latter.

386. Includes growth through migration and natural increase. Some of the increase in the Native American population recorded by the 1970 census resulted from more persons identifying themselves as Native American than had been so identified in earlier census tabulations.

TABLE 2

METROPOLITAN AND NONMETROPOLITAN RESIDENCE
OF WHITES AND BLACKS, 1950 TO 1970
(Numbers in Thousands)

	1950		1960		1970	
	Number	Percent	Number	Percent	Number	Percent
Total Population----------	151,326	100	179,323	100	203,184	100
in SMSA's----------	94,579	62.5	119,595	66.8	139,387	68.6
in nonmetropolitan areas----------	56,747	37.5	59,728	33.2	63,798	31.4
White Population----------	135,150	100	158,832	100	177,612	100
in SMSA's----------	85,099	63.0	105,180	66.2	120,424	67.8
in nonmetropolitan areas----------	50,051	37.0	53,652	33.8	57,189	32.2
Black Population----------	14,972	100	18,793	100	22,673	100
in SMSA's----------	8,850	59.1	12,710	67.6	16,786	74.0
in nonmetropolitan areas----------	6,122	40.9	6,083	32.4	5,887	26.0

Source: U.S., Department of Commerce, Bureau of the Census, Statistical Abstract of the United States, 1971, table 14.

Between 1960 and 1970, urban black population grew by 3.7 million, 3.3 million in central cities. By 1970, three-fourths of the black population lived in these areas, whereas in the South 44 percent of blacks still lived in rural areas. Only in the last decade did the southern black metropolitan population start to outnumber the small town and rural black population.

The pattern of urbanization among other minorities has been less uniform than among blacks. Approximately 45 percent of the Native American population lived in urban areas in 1970, as opposed to 28 percent of those persons counted as Native Americans in 1960. Thirty-six metropolitan areas now have a Native American population of more than 2,000.[387]

Within the Spanish origin population, nearly all persons of Puerto Rican and Cuban origin live in urban areas, whereas a large number of persons of Mexican origin are living in rural areas.[388]

The increasing central city concentration of urban blacks is seen in the fact that, since 1950, the black share of central city populations grew from 13.3 percent to 20 percent, while the black proportion of suburban population remained steady at approximately 5 percent (chart 1). Approximately 78 percent of the black urban population lived in central cities in 1970; 60 percent of metropolitan whites lived in suburban areas (table 3). Of the Nation's 40 largest cities, only 6 lost black population, whereas all but 6 lost white population by outmigration (table 4).

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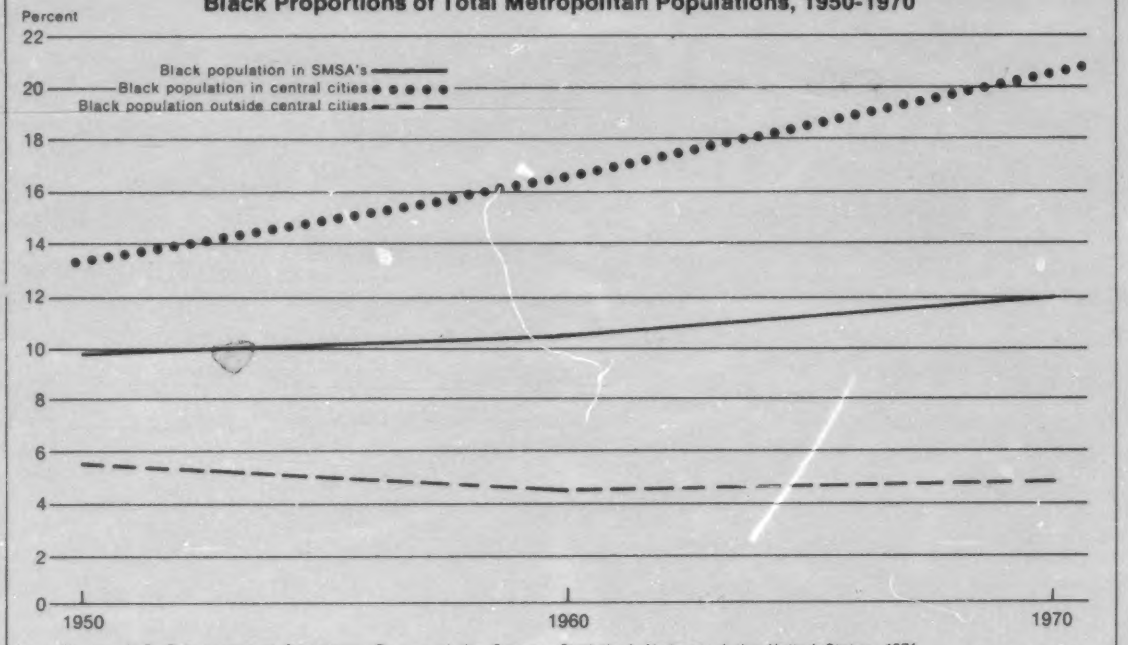
387. The five metropolitan areas with the largest Native American populations are Los Angeles-Long Beach, San Francisco-Oakland, Tulsa, Oklahoma City, and New York.

388. Puerto Rican origin urban population--1,390,000; rural, 32,400; Cuban origin urban population, 536,000; rural, 8,000; Mexican origin urban population, 3,800,000; rural, 656,000.

Chart 1
Black Proportions of Total Metropolitan Populations, 1950-1970



Source: U.S. Department of Commerce, Bureau of the Census, *Statistical Abstract of the United States, 1971*, table 14.

INCREASING RESIDENTIAL SEGREGATION

Within central cities, blacks have become increasingly concentrated in black neighborhoods. In 20 large cities, blacks in neighborhoods in which they represented three-fourths of the population increased from 30 to 51 percent between 1950 and 1970, while the proportion of blacks in mixed neighborhoods with 25 percent or less blacks declined from 25 to 16 percent.[389] In every one of 47 cities with black populations in excess of 50,000, the majority of blacks, and often the overwhelming majority, lives in predominantly or solidly black census tracts (table 5A and B).

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389. Sar A. Levitan, William Johnston, and Robert Taggert, Still a Dream: A Study of Black Progress, Problems and Prospects, (Washington, D.C.: Center for Manpower Policy Studies, George Washington University, 1973), table 7-7, p. 227.

TABLE 3

POPULATION OF STANDARD METROPOLITAN AREAS, INSIDE AND OUTSIDE CENTRAL CITIES, BY RACE, 1950 TO 1970

(Numbers in Thousands)

	1950		1960		1970	
	Number	Percent	Number	Percent	Number	Percent
Total SMSA Population	94,579	100	119,595	100	139,387	100
in central cities	53,817	57.0	59.964	50.1	63,816	45.8
outside central cities	40,762	43.0	59,631	49.9	75,570	54.2
White SMSA Population	85,099	100	105,180	100	120,424	100
in central cities	46,791	55.0	49,440	47.0	48,796	40.5
outside central cities	38,308	45.0	55,741	53.0	71,628	59.5
Black SMSA Population	8,850	100	12,710	100	16,786	100
in central cities	6,608	74.7	9,950	78.3	13,097	78.0
outside central cities	2,242	25.3	2,760	21.7	3,689	22.0

Source: U.S., Department of Commerce, Bureau of the Census, Statistical Abstract of the United States, 1971, table 14.

TABLE 4

MIGRATION GAINS AND LOSSES, BY RACE,
40 CITIES, 1960 to 1970

City	Negro and other races		Whites	
	Number	Percent[1]	Number	Percent
New York	435,840	38.2	-955,519	-14.4
Chicago	113,194	13.5	-645,866	-23.8
Los Angeles	119,522	28.7	-48,288	-2.3
Philadelphia	39,648	7.4	-246,435	-16.8
Detroit	97,533	20.0	-386,771	-32.7
Houston	55,619	25.6	67,243	9.3
Baltimore	31,737	9.7	-149,741	-24.5
Dallas	46,899	35.7	7,525	1.4
Washington, D.C.	38,348	9.2	-138,322	-40.1
Cleveland	-2,769	-1.1	-206,373	-33.1
Indianapolis	15,420	15.3	-17,429	-2.9
Milwaukee[2]	23,038	35.0	-128,388	-19.0
San Francisco	37,485	27.6	-93,122	-15.4
San Diego	17,305	38.7	27,616	5.2
San Antonio	5,304	12.3	-52,349	-9.6
Boston	26,493	38.7	-130,621	-20.8
Memphis[3]	22,581	12.2	34,542	11.0
St. Louis	-948	-0.4	-181,815	-34.0
New Orleans	-10,548	-4.5	-91,607	-23.3
Phoenix	5,599	21.8	71,453	17.3
Columbus	9,371	12.0	-10,600	-2.7
Seattle	9,810	21.1	-72,572	-14.2
Jacksonville	-3,914	-3.7	5,337	1.5
Pittsburgh	-6,444	-6.3	-99,079	-19.7
Denver	12,154	34.5	-41,116	-9.0
Kansas City, Mo.	13,037	15.5	-28,835	-7.4
Atlanta	32,707	17.5	-82,474	-27.4
Buffalo	8,965	12.2	-111,095	-24.2
Cincinnati	-2,520	-2.3	-106,096	-27.0
Nashville	2,354	3.1	-1,906	-0.6
San Jose[4]				
Minneapolis	7,239	46.4	-94,381	-20.2
Fort Worth	11,250	19.8	-19,435	-6.5
Toledo[3]	5,785	14.3	-28,645	-10.3
Portland, Ore.	4,661	22.3	-7,565	-2.2

TABLE 4 (Cont.)

MIGRATION GAINS AND LOSSES, BY RACE
40 CITIES, 1960 to 1970

	Negro and other races		Whites	
	Number	Percent	Number	Percent
Newark	31,506	22.6	-106,583	-40.1
Oklahoma City	5,242	12.4	-10,425	- 3.7
Oakland	29,463	30.4	-61,373	-22.7
Louisville	6,978	9.9	-78,093	-24.4
Long Beach	8,177	55.4	-18,942	-5.8

1. Percentage pertains to 1960 population base.
2. Figures are for Milwaukee County.
3. Some change is the result of annexation to the central city.
4. No racial migration figures are provided for the city of San Jose.

Source: U.S., Department of Commerce, Bureau of the Census, General Demographic Trends for Metropolitan Areas, 1960 to 1970, 1970 census of Population, series PHS(2) 4,6, 7, 10, 11, 12, 15, 16, 19, 20, 22, 23, 24, 25, 27, 32, 34, 37, 38, 39, 40, 44, 45, 49, 51.

TABLE 5

INDICATORS OF RACIAL SEPRATION IN CITIES WITH POPULATIONS OVER 100,000 AND BLACK POPULATIONS OVER 50,000, 1970

A. PROPORTION OF BLACK POPULATION LIVING IN CENSUS TRACTS 50 PERCENT OR MORE BLACK

Rank		Percent	Rank		Percent
1.	Washington, D.C.	96.2	26.	New Orleans	85.3
2.	Chicago	93.9	27.	Mobile	85.1
3.	Cleveland	93.7	28.	Houston	83.3
4.	Richmond, Va.	93.6	29.	Buffalo	83.2
5.	Jackson, Miss.	93.3	30.	Jacksonville	82.6
6.	Dallas	92.8	31.	Philadelphia	81.9
7.	Baltimore	91.5	32.	Tampa	81.3
8.	Oklahoma City	91.3	33.	Ft. Worth	81.0
9.	Atlanta	91.0	34.	Pittsburgh	80.5
10.	Dayton	90.9	35.	Flint	80.3
11.	Savannah	90.6	36.	Boston	76.1
12.	Detroit	90.4	37.	Cincinnati	76.1
13.	Gary	90.0	38.	Indianapolis	76.0
14.	Newark	89.7	39.	Nashville	75.6
15.	Charlotte, N.C.	89.5	40.	Columbus	73.9
16.	Memphis	89.0	41.	Toledo	69.3
17.	Shreveport	88.9	42.	Oakland	66.6
18.	Miami	88.5	43.	New York	64.0
19.	Kansas City	88.5	44.	San Diego	58.3
20.	St. Louis	88.2	45.	San Francisco	55.5
21.	Norfolk	87.4	46.	Jersey City	53.5
22.	Los Angeles	86.9	47.	San Antonio	51.8
23.	Birmingham	86.0			
24.	Milwaukee	86.0			
25.	Louisville	85.8			

Source: Special census tabulations prepared for the Office of Equal Opportunity, Department of Housing and Urban Development, by the Census Data Corp.

TABLE 5 (cont.)

B. PROPORTION OF BLACK POPULATION LIVING IN CENSUS TRACTS 90 PERCENT OR MORE BLACK

Rank		Percent	Rank		Percent
1.	Chicago	77.7	26.	Birmingham	46.9
2.	Shreveport	76.3	27.	Philadelphia	44.7
3.	Atlanta	74.9	28.	Newark	43.2
4.	Mobile	72.2	29.	Buffalo	42.9
5.	Norfolk	71.8	30.	Milwaukee	41.7
6.	Jackson, Miss.	71.6	31.	New Orleans	41.0
7.	St. Louis	71.2	32.	Indianapolis	39.2
8.	Baltimore	70.8	33.	Houston	38.8
9.	Gary	68.8	34.	Pittsburgh	38.2
10.	Richmond	67.6	35.	Tampa	37.3
11.	Cleveland	67.4	36.	Cincinnati	36.6
12.	Washington, D.C.	66.5	37.	Flint	34.7
13.	Dallas	66.0	38.	Boston	31.3
14.	Dayton	65.1	39.	Los Angeles	30.0
15.	Miami	64.9	40.	Toledo	29.7
16.	Memphis	61.2	41.	New York	28.4
17.	Savannah	60.0	42.	San Antonio	25.7
18.	Oklahoma City	59.6	43.	Oakland	15.2
19.	Jacksonville	56.9	44.	Columbus	15.2
20.	Louisville	53.9	45.	Jersey City	9.8
21.	Nashville	51.3	46.	San Francisco	0.0
22.	Charlotte	50.1	47.	San Diego	0.0
23.	Kansas City, Mo.	49.3			
24.	Ft. Worth	49.0			
25.	Detroit	48.9			

Source: Special census tabulations prepared for the Office of Equal Opportunity, Department of Housing and Urban Development, by Census Data Corp.

Generally speaking, cities with a smaller number of blacks show a lesser degree of concentration. However, there are exceptions, as in Ft. Lauderdale where 95 percent of 21,000 blacks live in concentrated black areas, and Las Vegas where 93 percent live in solidly black tracts.

By all measures, Chicago has a high degree of segregation, while San Francisco, Los Angeles, and New York show a relatively high degree of dispersion. For some cities, the rank varies depending on the measurement used. In cities where blacks are less concentrated in solidly black areas, it cannot readily be assumed that blacks have greater access to nonsegregated housing throughout the community. Less concentration usually indicates that the patterns are less rigid. Thus, in cities in which there is only one "ghetto" area expanding at the fringes, a more rigid pattern of residential segregation exists. In those cities with two or more ghetto areas expanding at the fringes, less-segregated patterns result when the black housing demand is not sufficient to fill up the potentially open areas at the various "ghetto" fringes.

BLACK MOVEMENT TO THE SUBURBS

Although black segregation and concentration in central cities have increased during the last two decades, the movement of a small but significant number of blacks to suburban areas may indicate an easing of past trends. A 1971 study of 15 of the largest metropolitan areas of the United States showed that in 10 areas the suburban black population grew by more than 50 percent during the 1960's. In 9 of these areas, the black population grew at a higher rate in the suburbs than it did in the central

city (table 6). This new trend began relatively late in the decade when the annual rate of black population growth in the suburbs reached 8 percent. Increases in black income in the late 1960's, changes in attitudes and behavior of blacks and whites, effects of the civil rights movement of the 1960's, and subsequent changes in public policy, in particular the Federal Fair Housing Law, all played a part in increasing black suburbanization.

In general, suburban blacks are more integrated with whites than in central cities.[390] Table 7 shows the degree of black concentration in the suburban census tracts of 34 cities. In most cities the majority of suburban blacks live in tracts in which white population is predominant. However, Detroit, Los Angeles-Long Beach, Chicago, St. Louis, Gary, Cleveland, Jackson (Mississippi) and San Francisco-Oakland are among metropolitan areas in which the majority of suburban blacks live in overwhelmingly black tracts. In some of these areas, a substantial portion of suburban blacks are concentrated in relatively older cities and towns outside central cities.[391] These places in many respects resemble their sister central cities rather than new growth, suburban areas and hence do not fit the common concept of suburbs.[392]

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390. Deborah R. Both, A Study of the Suburban Residential Integration Process in the Washington Metropolitan Area (Master's thesis, George Washington University, 1974), pp. 2-3.

391. The degree of black dispersion within suburban areas is more difficult to assess than in central cities inasmuch as available data in many instances relates only to census tracts, which cover a much larger geographical area than a central city, census block classification. Specific knowledge of black suburban settlement patterns in each metropolitan area is needed to assess this factor fully.

392. East St. Louis with more than one-third of the St. Louis suburban blacks; Camden, N.J., and Chester, Pa., with one-third of suburban Philadelphia blacks; Compton and Willowbrook in the Los Angeles Long Beach SMSA; Cambridge in the Boston SMSA.

TABLE 6

PERCENT CHANGES IN POPULATION FROM 1960-1970,
15 LARGEST METROPOLITAN AREAS

	Central Cities		Suburbs	
	Black Pop.	White Pop.	Black Pop.	White Pop.
New York	53%	-9%	55%	24%
Los Angeles-Long Beach	52	5	106	14
Chicago	36	-19	62	34
Philadelphia	24	-13	34	21
Detroit	37	-29	26	28
San Francisco-Oakland	40	-17	61	29
Washington	31	-39	102	58
Boston	66	-17	53	11
St. Louis	19	-32	54	27
Baltimore	29	-21	16	36
Cleveland	15	-27	453	23
Houston	47	26	7	63
Newark	50	-37	64	11
Minneapolis	49	-9	223	55

Source: "How Racial Patterns Are Shifting in Your Neighborhood," U.S. News and World Report, March 1, 1971, p. 25.

TABLE 7

INDICATORS OF RACIAL SEPARATION IN SUBURBAN SECTORS OF SELECTED STANDARD METROPOLITAN AREAS, 1970

A. PROPORTION OF BLACK SUBURBAN POPULATIONS LIVING IN CENSUS TRACTS 50 PERCENT OR MORE BLACK

Rank		Percent	Rank		Percent
1.	Miami	80.1	18.	Norfolk	39.2
2.	Gary	73.7	19.	Buffalo	36.9
3.	Detroit	70.2	20.	Houston	35.5
4.	Los Angeles	69.7	21.	Flint	35.2
5.	Shreveport	68.3	22.	New York	34.8
6.	Memphis	65.2	23.	Savannah	34.3
7.	San Francisco	60.2	24.	Philadelphia	34.1
8.	Kansas City, Mo.	59.9	25.	Washington, D.C.	33.2
9.	St. Louis	55.4	26.	Cincinnati	33.0
10.	Chicago	54.3	27.	Dayton	31.2
11.	Jackson, Miss.	52.3	28.	Dallas	30.3
12.	Tampa	49.2	29.	Atlanta	21.8
13.	Newark	49.2	30.	Pittsburgh	21.4
14.	Cleveland	48.4	31.	Nashville	19.2
15.	Mobile	45.6	32.	Richmond	17.0
16.	Birmingham	44.3	33.	Columbus	17.0
17.	New Orleans	44.0	34.	Baltimore	13.5

B. PROPORTION OF BLACK SUBURBAN POPULATIONS LIVING IN CENSUS TRACTS 90 PERCENT OR MORE BLACK

Rank		Percent	Rank		Percent
1.	Detroit	43.8	14.	Chicago	17.0
2.	Kansas City, Mo.	38.7	15.	Tampa	15.3
3.	Miami	37.5	16.	San Francisco	14.7
4.	Savannah	34.3	17.	Cleveland	11.9
5.	Shreveport	34.1	18.	Newark	11.5
6.	St. Louis	27.9	19.	Dallas	11.3
7.	Buffalo	27.0	20.	Birmingham	11.2
8.	Cincinnati	25.0	21.	Philadelphia	11.2
9.	New Orleans	22.5	22.	Norfolk	10.6
10.	Mobile	22.3	23.	Memphis	10.5
11.	Dayton	17.7	24.	Pittsburgh	2.4
12.	Los Angeles	17.2	25.	New York	2.1
13.	Washington, D.C.	17.2	26.	Baltimore	0.8

Source: Special census tabulations prepared for the Office of Equal Opportunity, Department of Housing and Urban Development, by the Census Data Corp.

Black movement to the suburban areas of Washington, D.C., may be fairly typical of black suburbanization elsewhere. There, increases in black population throughout the suburban areas have taken place but in a very uneven pattern. Most blacks (67 percent) have moved to the close-in suburban neighborhoods of Prince George's County, which are contiguous to heavily black southeast and northeast Washington. Thus, the predominant pattern of suburban black settlement in Washington has been extended ghettoization.[393]

In other Washington metropolitan jurisdictions, blacks have located through a pattern that primarily establishes or reinforces pockets of minority population. Only a small number of blacks has moved into predominantly white neighborhoods. However, this limited amount of integration is a significant change from earlier patterns in the metropolitan Washington area. It indicates that blacks, particularly those with higher incomes, are taking advantage of a greater variety of housing locations than previously.[394]

LOCATION OF OTHER MINORITIES

Residential location of urban Spanish origin populations appears to resemble the pattern of concentration found among urban blacks. Persons of Puerto Rican origin in northeastern cities such as New York, Philadelphia, New Haven, and Bridgeport are especially segregated. However, there is evidence that Spanish origin families in the South and Southwest are less segregated than American blacks in the same areas. A 1974 study of 109 cities in the South found that the trend towards residential segregation has been reversed since 1960. While in nearly every city the study showed that in 1970 there were more blocks with both white and minority residents than in 1960, the most dramatic changes were in cities with large Spanish origin populations, e.g., San Antonio and San Diego with large Mexican American populations, and

393. Both, Suburban Residential Integration Process, p. 52.

394. Ibid., pp. 54-57.

Miami with a large Cuban population. It has been inferred from this study that persons of Spanish origin are having less difficulty than blacks in finding housing outside of areas of minority concentration.[395]

Native Americans living in metropolitan areas are more likely than blacks to live outside central cities. In 36 metropolitan cities with Native American populations in excess of 2,000 an average of 48.4 percent lived outside central cities.[396]

Contrary to the pattern in metropolitan areas, Native Americans face severe restrictions relative to the neighborhoods in which they can find housing in smaller localities in such States as Montana, North Dakota, and South Dakota.[397]

The concentration and consequent isolation of urban minority populations is likely to continue in the future unless much greater effort is made to reverse the effect of the forces that have led to residential segregation in urban areas throughout the United States. Without such effort, the future is likely to bring the establishment of many more "super ghettos," some of which exist now, and in which the life chances of the average minority resident are depressed rather than enhanced.[398]

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395. Washington Post, May 26, 1974. The study was performed by the University of Wisconsin Institute for Research on Poverty directed by Karl E. Taeuber.

396. In 1970 metropolitan areas with the highest concentrations of Native Americans in the central cities were New York with 82 percent, Milwaukee with 81 percent, Minneapolis-St. Paul with 79 percent, Houston with 75 percent and Chicago with 73 percent. U.S. Department of Commerce, Bureau of the Census, General Population Characteristics: 1970, Series PC(1)B.

397. Montana, North Dakota, and South Dakota Advisory Committee to the U.S. Commission on Civil Rights, Indian Civil Rights Issues in Montana, North Dakota, and South Dakota, (1974), pp. 37-38 (cited hereafter as Indian Civil Rights Issues).

398. Rose, "Spatial Development," p. 64.

In addition, the social costs of continued ghetto expansion are likely to exact a high price in the long run in adverse impacts on metropolitan growth and development. [399]

399. John F. Kain, "Housing Market Discrimination and its Implications for Government Housing Policy" (paper prepared for the Department of Housing and Urban Development, June 29, 1973), p. 32.

Chapter 3

HOUSING CONDITIONS OF MINORITIES AND FAMILIES HEADED SOLELY BY WOMEN

Over the last two decades, minority housing conditions improved substantially, particularly in urban areas. The extent of improvement, however, lagged well behind that for white. Thus, a disproportionately greater number of minorities than of white continue to live in substandard[400] and overcrowded housing.

Rates of homeownership for minority families and families headed by women are substantially below the rate for white families and families headed by men. Housing owned by minorities is of considerably less value, on the average, than white-owned homes. Minority-owned housing is among the oldest in the Nation's housing stock.

Well over half of the black population lived in poverty areas[401] in 1970, and the majority of black persons in families headed by women were

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400. The term "substandard housing," used as a measure of housing quality, was first coined by the national housing agencies in the 1950's. It is descriptive of the structural quality as well as the basic facilities of a housing unit. In 1950, units in a dilapidated condition were defined as substandard. In 1960, deteriorating housing was added as a classification in the substandard category. In the 1970 census, structural quality was not measured. However, units lacking some or all basic plumbing facilities, previously included in the substandard category, were counted in 1970.

401. In metropolitan areas, the census defines a low-income area in terms of a census tract in which 20 percent or more of the population was below the poverty-income level in 1969. In nonmetropolitan areas, a low-income area is defined in terms of a township, district, etc., in which 20 percent of the population is below this income level. In 1972 about one-fifth of all persons in the United States lived in low-income areas, and nearly one-half (46 percent) of the poor resided in these areas as compared to 17 percent of the nonpoor. U.S., Department of Commerce, Bureau of the Census, Characteristics of the Low Income Population: 1972, Current Population Reports, series P. 60, no. 91 (1973), pp. 3-4.

poor and lived in such areas.[402] In general, poverty areas provide living conditions that are far less healthful than areas where the preponderence of families are above the poverty-income level. Little more than one quarter of the white population lived in such areas.

MINORITIES IN SUBSTANDARD HOUSING

Because census data and other information are often sketchy or nonexistent relative to the housing conditions of minorities other than blacks, the data in this section relate most accurately to blacks. It can fairly be stated, however, that the problems of blacks are shared by persons of Mexican and Puerto Rican origin, Native Americans, and Asian Americans.

The percentage of all American families[403] living in substandard housing[404] has declined from 35 percent in 1950 to approximately 7 percent in 1970 (chart 2). Considerably more black families than white lived in substandard housing in 1950: 73.2 percent of black families compared to 31.8 percent of white families. Between 1950 and 1970 the proportion of whites living in substandard housing dropped faster than the proportion of blacks. Thus in 1970, 23 percent of black families but only 5.7 percent of white families lived in substandard housing. One factor

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402. Of all black families below the poverty level, 63.8 percent were families headed by women in 1973; of all poor white families, 37 percent were families headed by women; and of all poor Spanish origin families, 45.1 percent were families headed by women. Of all black unrelated individuals below the poverty level 60.4 percent were females. For poor white and Spanish origin unrelated individuals, the figures were 70.8 percent and 57.1 percent respectively. U.S. Department of Commerce, Bureau of the Census, Characteristics of The Low-Income Population: 1973, Current Population Report, series P. 60, no. 98 (1975).

403. In this report, the term "family" or "home" is used interchangeably with the census terms "household" and "housing unit."

404. In 1950, the figures were for "Negro and other races." In 1970, black households were treated separately, and other races were included with whites.

creating this imbalance is that between 1950 and 1960, 9 out of 10 of standard homes added to the housing supply went to white occupants, despite the relatively greater need of blacks.

Because the incidence of substandard housing rises with declining income and a larger proportion of the black population is poor[405] than of the white, it can be expected that a larger proportion of blacks would be living in substandard housing conditions. However, this factor holds true for blacks in every income category (table 8).

The incidence of overcrowded housing is considerably more frequent among minority families of all income levels than among white families (table 9). In 1960, one-tenth of white homes had more than one person per room compared with 28 percent for nonwhites. By 1970 the proportion for whites and minorities other than blacks had fallen to 7 percent and for blacks to 19 percent. For families of Spanish origin living in urban areas, crowded conditions were more prevalent than for any other racial or ethnic group in 1970 (table 10). This was especially true for families of Mexican origin. In rural areas, Native American families had the highest incidence of overcrowding, followed closely by families of Mexican origin (table 11).

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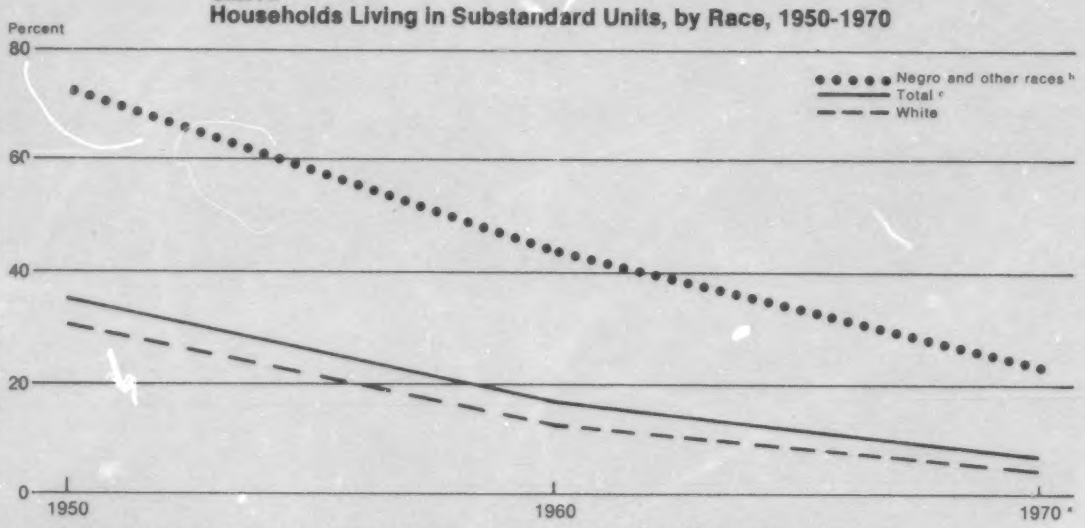
405. The poverty-level income for a nonfarm family of four in 1973 was $4,540, based on an annually adjusted poverty index that reflects the different consumption requirements of families according to their size and composition, sex and age of family head, and farm or nonfarm residence.

Chart 2
Households Living in Substandard Units, by Race, 1950-1970



a Figures for 1970 are based on a special tabulation of unpublished data provided by a 1970 Census Bureau survey, Components of Inventory Change.

b In 1970 "Negro and other races" is limited to Negro only and "White" included white and other races.

c For 1960 census data yielded a figure of 16 percent. However, 1960 data had a serious undercounting of dilapidated units. The 1959 Survey of Components of Change and Residential Finance (SCARF) is believed to have yielded more accurate figures regarding dilapidation. Hence, the 17 percent figure is based on SCARF findings.

Source: U.S., Executive Office of the President, Office of Management and Budget, *Social Indicators, 1973*, table 6/3.

Minority families are also more likely than white families to live in housing that lacks adequate plumbing facilities (table 10 and 11). This discrepancy is greater in rural areas. In rural areas especially, moreover, blacks, Mexican Americans, and Native Americans are quite likely to occupy housing that not only is overcrowded but also lacks adequate plumbing facilities (table 11).

TABLE 8

HOUSEHOLDS LIVING IN SUBSTANDARD UNITS BY INCOME AND RACE, 1970

	All races	White & Other	Black
Family Income	Percent	Percent	Percent
All households	7.4	5.7	23.0
Less than $2,000	23.8	19.4	45.6
$2,000 to $2,999	15.8	12.1	34.1
$3,000 to $3,999	12.5	9.4	29.5
$4,000 to $4,999	12.3	10.7	21.5
$5,000 to $5,999	9.1	7.3	19.0
$6,000 to $6,999	7.1	6.0	15.4
$7,000 to $9,999	4.5	3.6	13.7
$10,000 to $14,999	2.1	1.8	8.6
$15,000 and over	0.9	0.9	2.0

Note: Income is estimated family income. Table is based on Bureau of the Census, 1970 Components of Inventory Change Survey, unpublished data.

Source: Executive Office of the President: Office of Management and Budget, Social Indicators, 1973, table 6/6.

TABLE 9

HOUSEHOLDS LIVING IN CROWDED CONDITIONS, BY INCOME AND RACE, 1970

Family Income	All races Percent	White & Other Races Percent	Negro Percent
All Households	8.0	6.7	19.4
Less than $2,000	5.1	3.5	12.3
$2,000 to $2,999	6.6	4.5	18.4
$3,000 to $3,999	8.9	6.4	22.8
$4,000 to $4,999	9.8	7.5	24.0
$5,000 to $5,999	10.2	8.3	23.8
$6,000 to $6,999	10.2	8.6	23.0
$7,000 to $9,999	9.7	8.6	22.3
$10,000 to $14,999	8.2	7.5	19.8
$15,000 and over	5.8	5.4	17.4

Note: Income is 1969 family income. Housing units with more than one person per room are defined as overcrowded.

Source: Executive Office of the President, Office of Management and Budget, Social Indicators, 1973, table 6/13.

TABLE 10

SELECTED CHARACTERISTICS OF URBAN HOUSING BY RACE, 1970

	Total Population	White	Black	Spanish Origin			Indian	Other Races[2]
				Mexican Amer.	Puerto Rican	Cuban		
Overcrowded units[1] Percent of all units occ. by racial groups in urban areas	7.5%	5.3%	17.5%	31%	22%	24.5%	18.6%	18.4%
Units lacking some or all plumbing facilities Percent of all units occ. by racial group in urban areas	3.6%	2.7%	8.4%	6.8%	3%	2.4%	7.3%	4.3%
Median value owner-occupied units	$18,100	-	$11,600	$12,600	$18,200	$18,400	$13,500	$25,880
Median Contract rent	$92	-	$73	$74	$84	$110	$81	$105.40
Percent of all urban Units occ. by racial group owned	58.4%	61.8%	38.8%	49.7%	9.9%	23.4%	38.6%	40.5%

1. Overcrowded is defined as 1.01 persons or more per room.

2. "Other races" includes Japanese, Chinese, Fillipino, Korean, and all other races (Malayan, Polynesian, Thai, etc.).

Source: U.S. Department of Commerce, Bureau of the Census, Census of Housing: 1970, Vol 1, Part 1 United States Summary, Tables 10, 11, 12, 13, 14; Housing of Selected Racial Groups, Series #HC(7)-9, Tables A-1, -2, -3; American Indians, Series #PC(2)-1F, Table 10; Persons of Spanish Origin, Series #PC(2)-1C, Table 12.

TABLE 11

SELECTED CHARACTERISTICS OF RURAL HOUSING (FARM & NONFARM) BY RACE, 1970

	Total Population	White	Black	Spanish Origin			Indian	Other Races[2]
				Mexican Amer.	Puerto Rican	Cuban		
Overcrowded Units[1] Percent of all units occ. by racial group in rural areas	11%	8%	31%	43%	25.5%	9.5%	45%	24%
Units Lacking some or all plumbing facilities Percent of all units occ. by racial group in rural areas	18.8%	15.5%	62.5%	27.6%	8.7%	4.8%	46%	21.3%
Median value of owner-occupied units	$12,600	--	$6,000	$6,400	--[3]	--[3]	$4,900	$18,150
Median contract rent	$58	--	$30	$54.50	--[4]	--[4]	$41.50	$66.60
Percent of all rural units occ. by racial group owned	76.2%	77%	56.6%	57%	50.9%	51.2%	61.8%	61.3%

1. Overcrowded is defined as more than 1.01 persons per room.
2. Includes Japanese, Chinese, Filipino, Korean, and all other races (Malayan, Polynesian, Thai, etc.).

3. Median value of owner-occupied units for all households of Spanish Origin: $8,850.
4. Median contract rent for all households of Spanish origin: $53.

Source: U.S. Department of Commerce, Bureau of the Census, Census of Housing: 1970, Vol. 1, Part 1, United States Summary, Tables 10, 11, 12, 13, 14; Housing of Selected Racial Groups, Series #HC(7)-9, Tables A-1, -2, -3; American Indians, Series #PC(2)-1F, Table 10; Persons of Spanish Origin, Series #PC(2)-1C, Table 12.

Not only is the incidence of overcrowding and inadequate plumbing facilities higher among minority families, but a greater proportion of minorities at all income levels live in such housing than whites. For example, 14 percent of the housing occupied by white[406] families with income below $2,000 lacked some or all plumbing facilities in 1970 and 3.5 percent were overcrowded. For black families at this income level, the respective figures were 29.9 percent and 12.3 percent. At the other end of the income scale, only 0.7 percent of the white households earning $15,000 or more lived in homes lacking adequate plumbing facilities, and 5.4 percent were overcrowded. For black families with similar incomes, the figures were 2.3 percent and 17.4 percent, respectively.[407]

Even in homes with adequate plumbing facilities, the number of such facilities in minority homes lagged well behind the number found in white homes. For example, 26 percent of all white-occupied housing in 1970 had more than one bath as opposed to only 12 percent of black-occupied homes.[408] In other amenities, such as clothes washers and dryers, dishwashers, and garbage disposals, minority homes lagged well behind white homes.

MINORITY HOMEOWNERSHIP

Although the gap between minority and white homeownership rates narrowed slightly between 1960 and 1970, the difference is still substantial. Homeownership for minorities increased from 38 percent in 1960 to 45.1 percent in 1970. For whites, the homeownership rate was 64 percent in 1960 and 69.4 percent in 1970.

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406. These figures are for whites and "other races." There can be no doubt, that households of Native Americans and persons of Mexican and Puerto Rican origin have characteristics by family income level similar to those of black households, given the fact that in general these two minority populations lag well behind whites insofar as adequate housing is concerned, as shown in tables 10 and 11. Combining the "other races" category with whites therefore results in an understatement of the housing conditions of whites.

407. Levithan, Johnston, and Taggert, Still A Dream, table 7-2, p. 217.

408. Ibid., p. 218.

For blacks there is a wide regional variation in rates of homeownership. In 1970, 47 percent of southern black families owned[409] homes compared with 29 percent of those in the Northeast. In each income class and area of residence, whites owned their homes more frequently than blacks (table 12).

Lower black than white income can only partly explain the differences in homeownership rates. Blacks could be expected to have a higher rate of homeownership than currently exists were limited income the only barrier. Restrictions placed against blacks seeking to purchase homes is a far more significant factor.

Table 13 provided estimates of actual levels of black homeownership in 18 large metropolitan areas in 1960 and of the levels of homeownership that would have existed if income were the only factor affecting homeownership rates. The restrictions against minority homeownership suggested by the figures in tables 12 and 13 have far greater ramifications than may at first be evident. John Kain and John Quigley, researchers in housing market discrimination, found that:

> An effective limitation on homeownership can increase Negro housing costs over 30 percent, assuming no price appreciation. Moreover, ...given reasonable assumptions about appreciation of single family homes, a Negro household prevented from buying a home in 1950 would have out-of-pocket housing costs in 1970 more than twice as high as the costs would have been if the family had purchased a home 20 years earlier. These increases in housing costs are in addition to any price markups.410

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409. The 1970 homeownership rate for black families was 47.7 percent; for families of Mexican origin, 53.4 percent; of Puerto Rican origin, 30.4 percent; of Cuban origin, 37.8 percent; for Native American families, 50.2 percent; and for all other nonwhite families, 50.9 percent.

410. John F. Kain and John M. Quigley, "Housing Market Discrimination, Homeownership, and Savings Behavior." The American Economic Review, vol. 52 (June 1972), pp. 263-77.

TABLE 12

PERCENT OF FAMILIES RESIDING IN OWNER-OCCUPIED HOUSING UNITS BY 1969 INCOME, INSIDE AND OUTSIDE METROPOLITAN AREAS, 1970

Race and Residence	Total	Annual Income [1] Less than $3,000	$3,000 to $4,999	$5,000 to $6,999	$7,000 to $9,999	$10,000 to $14,999	$15,000 or More
Black							
Total	42	33	34	38	47	57	70
Metropolitan Areas	39	26	28	33	44	56	69
In Central Cities	35	23	25	30	40	52	66
Outside Central Cities	54	43	44	49	58	68	80
Outside Metropolitan Areas	52	46	48	56	63	70	77
White and Other							
Total	65	53	53	54	63	74	82
Metropolitan Areas	62	45	46	47	58	71	81
In Central Cities	51	35	37	38	49	62	72
Outside Central Cities	71	56	56	55	65	77	86
Outside Metropolitan Areas	72	65	65	66	72	80	87

Source: U.S. Department of Commerce, Bureau of the Census, The Social and Economic Status of the Black Population in the United States, 1972, Series P-23, No. 46, July 1973, Table 62.

TABLE 13

ACTUAL AND EXPECTED PROPORTIONS OF NEGRO FAMILIES WHO ARE HOMEOWNERS BY SMSA, 1960

SMSA	Actual Percent	Expected Percent
Atlanta	31	52
Boston	21	43
Chicago	18	47
Cleveland	30	58
Dallas	39	54
Detroit	41	67
Los Angeles/Long Beach	41	51
Newark	24	50
Philadelphia	45	66
St. Louis	34	55
Baltimore	36	61
Birmingham	44	56
Houston	46	56
Indianapolis	45	58
Memphis	37	50
New Orleans	28	40
Pittsburgh	35	59
San Francisco-Oakland	37	51

Source: John F. Kain and John M. Quigley, "Housing Market Discrimination, Homeownership, and Savings Behavior," American Economic Review, June 1972, Table 3.

Current and historical limitations on homeownership and the substantial decline in black farm ownership in the South are important reasons why black families at every income level have less wealth today than white families. Homeownership has been the principal means of capital accumulation for low- and middle-income families. The importance of homeownership has been illustrated by John F. Kain. He estimates that the average house purchased with an FHA mortgage in 1949 had a value of $8,286 and a mortgage of $7,101. If this house were purchased with a 20-year mortgage by a 30-year-old household head, and the home neither appreciated or depreciated, the purchaser of this home would have saved more than $7,000 and would own the home free and clear by his or her 50th birthday. However, Kain stated that the average appreciation of single-family houses during the past 20 years must have exceeded 100 percent, which is a conservative estimate. Therefore, the homeowner in Kain's example would have accumulated assets by age 50 worth at least $16,000, a considerable sum that he or she could use to reduce housing costs, to borrow against for family needs, or simply hold for retirement.[411]

For minorities who have obtained homeownership, median housing value is considerably less than that for whites, and the houses owned are generally older (tables 10 and 11). In 1970, 60.7 percent of the whites owned homes worth $15,000 or more and 35 percent of these homes were constructed since 1960. Only 29.8 percent of the black owned homes were constructed since 1960 (table 14). On the other hand, 46.3 percent of black homeowners owned homes of less than $10,000 value and 93 percent of them were built prior to 1960. Although the age of similar white-owned homes approximated those owned by blacks in this category, only 19.4 percent of the whites owned homes under $10,000 in value. Among homes valued the highest ($20,000 or more), those owned by blacks were less likely than those owned by whites to be of recent construction.

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411. John F. Kain, "Housing Market Discrimination and Its Implications for Government Housing Policy" (paper prepared for the Department of Housing and Urban Development, June 29, 1973), pp. 14-15.

TABLE 14

YEAR STRUCTURE BUILT BY VALUE OF OWNER OCCUPIED HOUSING UNITS AND RACE OF OWNER: 1970

Year structure built	Total	Value						
		Less than $5,000	$5,000 to $7,499	$7,500 to $9,999	$10,000 to $12,499	$12,500 to $14,999	$15,000 to $19,999	$20,000 or more
Specified black occupied.....								
thousands.....	2,079	334	320	310	289	206	339	281
Percent, total.....	100	100	100	100	100	100	100	100
1969 to March 1970.....	2	1	1	1	2	3	3	4
1965 to 1968.....	6	4	4	4	5	7	8	12
1960 to 1964.....	10	7	8	9	10	11	12	16
1950 to 1959.....	22	17	19	21	24	25	26	26
1949 or earlier.....	59	71	67	65	59	54	51	43
Percent by value.....	100	16	15	15	14	10	16	14
1969 to March 1970.....	100	7	8	9	12	14	26	25
1965 to 1968.....	100	9	10	11	12	11	20	26
1960 to 1964.....	100	11	12	12	14	11	19	20
1950 to 1959.....	100	12	13	14	15	11	19	16
1949 or earlier.....	100	20	18	16	14	9	14	10
Specified white[1] occupied.....								
thousands.....	29,647	1,489	1,933	2,344	3,014	2,882	6,094	11,890
Percent, total.....	100	100	100	100	100	100	100	100
1969 to March 1970.....	2	1	1	1	1	1	2	5
1965 to 1968.....	10	3	2	2	3	5	8	17
1960 to 1964.....	14	5	5	5	8	11	15	20
1950 to 1959.....	29	12	15	19	26	33	36	32
1949 or earlier.....	45	80	78	72	62	51	39	26
Percent by value.....	100	5	7	8	10	10	21	40
1969 to March 1970.....	100	2	2	2	3	4	15	74
1965 to 1968.....	100	1	2	2	3	5	17	70
1960 to 1964.....	100	2	2	3	6	8	23	57
1950 to 1959.....	100	2	3	5	9	11	25	44
1949 or earlier.....	100	9	11	13	14	11	18	24

1. Includes persons of "other races."

Source: U.S., Department of Commerce, Bureau of the Census, Current Population Reports, series P-23, no. 46, Social and Economic Status of the Black Population in the United States, 1972, table 63.

RENTAL HOUSING FOR MINORITIES

A much greater proportion of minority renters also live in older housing. In 1970, 16 percent of black renters lived in housing built within the last decade, compared to 25 percent of white renters. Seventy percent of black renters, as compared to 59 percent of white renters, lived in housing built in 1949 or earlier.

HOUSING COSTS OF MINORITIES

In general, minorities pay lower median contract rents[412] than whites (tables 10 and 11). Nevertheless, according to some studies, blacks still spend more of their income for housing than whites. Table 15 shows one estimate of housing costs as a percentage of income in 1970. These figures show, for example, that 30 percent of black homeowners paid one-quarter of their incomes or more for housing as compared to 18 percent of the white homeowners. Approximately 43 percent of black renters, compared to 35 percent of white renters, paid one-quarter of their incomes or more for rent.

Other recent studies, however, have found that blacks actually spend a smaller fraction of their incomes on housing than whites of similar income and family structure because of the higher relative prices of good quality housing to which whites have easy access but which is in short supply in areas of minority concentration.[413] These studies concluded that blacks would spend as much or more than similarly situated whites, were access the same for both groups to a similar range of housing.

Other studies confirm that blacks pay more than whites for housing of similar size, quality, and neighborhood amenity. The Kaiser Commission found that nonwhites in urban areas paid up to 30 percent more than whites to obtain minimally adequate housing in 1960.[414] A later study provided

412. See table 18 for definition of contract rent.

413. John F. Kain, "Housing Market Discrimination and Its Implications for Government Housing Policy" (paper prepared for the Department of Housing and Urban Development, June 29, 1973), pp. 15-16.

414. President's Committee on Urban Housing, A Decent Home, pp. 42-43.

TABLE 15

HOMEOWNERSHIP AND RENTAL COSTS, BY RACE, 1970

Annual Housing Cost As Percent of Income	Homeownership		Rental	
	Black	White and Other	Black	White and Other
Number (thousands)	1,786	26,776	3,607	19,953
Percent	100	100	100	100
Less than 10 percent	14	20	23	27
10 to 14 percent	18	21	23	27
15 to 19 percent	14	18	15	17
20 to 24 percent	11	11	11	12
25 to 34 percent	13	9	14	13
35 percent or more	12	7	29	22
Not reported	19	14	8	9
Median	18	16	24	20

Note: Annual housing costs included the sum or payments for real estate taxes, special assessments (if any), property insurance, utilities, fuel, water, ground rent (if any), and interest and principal payments on all mortgages (if property is mortgaged), plus any other items included in the mortgage payment. "Gross rent" is the contract rent plus the estimated average monthly cost of utilities and fuel, if these items are paid for by the renter in addition to rent.

Source: Sar A. Levitan, William Johnson, and Robert Taggert, Still A Dream, A Study Black Progress, Problems and Prospects (Washington, D.C.: Center for Manpower Policy Studies, George Washington University, 1973). Table 7-6 based on data from U.S., Department of Commerce, Bureau of the Census, The Social and Economic Status of the Black Population in the United States, 1972, series p-23, no. 46, tables 64 and 65.

estimates of the magnitude of discrimination markups[415] for rental properties occupied by blacks for 10 metropolitan areas (see table 16). In only one, San Francisco, was evidence insufficient to indicate rental markups based on race. A similar markup system exists with respect to homes purchased by blacks.[416]

BLACKS IN POVERTY AREAS

Whether below or above the poverty income level, a much greater proportion of blacks than whites lived in poverty areas in 1970, both inside and outside metropolitan areas, as shown in Table 17. In nonmetropolitan areas, 80.2 percent of low-income blacks and 71.3 percent of blacks above the poverty level lived in low-income areas. For whites the figures are 50.6 percent and 30.9 percent respectively. In metropolitan areas, 66 percent of low-income blacks and 46.5 percent of blacks above the poverty level lived in low income areas. For whites the figures respectively were 22.8 percent and 6.1 percent. Moreover, low-income whites living in metropolitan areas were distributed equally between central cities and suburban areas. For blacks the ratio was 5 to 1.

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415. The discrimination markup is a monetary difference in either the rent or purchase price paid by blacks. Kain, "Theories of Residential Location," p. 17.

416. A 1967 study of the St. Louis housing market showed a 9 percent markup in rental units and a 15 percent markup in sale units. More recent analyses using later data indicate that comparable differences in sale and rental prices exist today. Because housing is a collection of heterogeneous attributes, the markups of the numerous housing characteristics are not uniform. Thus, "larger price differences arise, if different price structures of the ghetto and non-ghetto housing markets are taken into account...the typical ghetto rental unit could be obtained for 13 percent less in all white areas (and) the typical non-ghetto rental-and owner-occupied units would cost 14 percent to 15 percent more respectively in the ghetto than in the non-ghetto housing market." Ibid., pp. 17-18.

TABLE 16

ESTIMATED MARKUPS FOR NONWHITE RENTERS, 1960-61

City	Percent
Chicago	20.4
Los Angeles	9.5
Detroit	9.6
Boston	3.1
Pittsburgh	16.9
Cleveland	12.6
Washington, D.C.	3.0
Baltimore	17.4
St. Louis	13.4
San Francisco-Oakland	0.1

Source: Robert F. Gillingham, "Place to Place Rent Comparisons Using Hedonic Quality Adjustment Techniques Research" (Washington, D.C.: U.S. Department of Labor, Bureau of Labor Statistics, Office of Prices and Living Conditions, Discussion Paper No. 7, March 1973), p. 60. These percentages represent a combined estimate of 17.6 percent for nonwhite households residing in mixed blocks (20 to 39 percent nonwhite); 22.9 percent for nonwhite households residing in predominantly nonwhite blocks (more than 40 percent nonwhite).

TABLE 17

LOW-INCOME AREA RESIDENCE, INCOME STATUS, METROPOLITAN-NONMETROPOLITAN RESIDENCE, AND RACE OF HEAD, 1972

	Below low-income level		Above low-income level	
	White Percent	Black Percent	White Percent	Black Percent
In low-income areas	35.3	70.5	13.9	51.1
Outside low-income areas	64.7	29.5	86.1	48.9
Metropolitan areas				
In low-income areas[1]	22.8	66.0	6.1	46.5
Outside low-income areas	27.2	34.0	93.9	53.5
Inside Central Cities				
in low-income areas	31.5	71.8	10.2	51.0
Outside low-income areas	68.5	28.2	89.8	49.0
Outside Central Cities				
in low-income areas	13.5	37.8	3.6	31.9
outside low-income areas	86.5	62.2	96.4	68.1
Nonmetropolitan areas				
in low-income areas	50.6	80.2	30.9	71.3
outside low-income areas	49.4	19.8	69.1	28.7

1. In 1973, the percentages for both whites and blacks living in low-income areas of metropolitan areas changed slightly, as follows: whites below the poverty level, 23 percent; above the poverty level, 6 percent; blacks below the poverty level, 67 percent; above the poverty level, 44 percent.

Source: U.S., Department of Commerce, Bureau of the Census, Current Population Reports, Series P-60, no. 91, "Characteristics of the Low-Income Population: 1972," Table B; Series P-60, no. 98, "Characteristics of the Low-Income Population: 1973," pp. 10-11.

Thus, whites not only enjoy better housing conditions than blacks but better neighborhood environments as well, regardless of income. The quality of the immediate neighborhood is at least as important as the physical condition of the housing itself when the concern is for the total home environment of the family or individual. Figures relating the incidence of overcrowded and substandard housing conditions are clearly insufficient to convey the pervasive picture of bad living conditions found in low-income areas, especially in central cities.

In central city poverty areas, for example, housing density is many times greater than anywhere else.[417] The Douglas Commission found that, "in central city poverty areas, congestion is the great evil, making for acute shortages of open and recreational space, continual crowding in use of transit and other public facilities, and the sense of confinement or containment that gives some support to the label 'ghettos' that has come to be applied to them."[418] Here, too, educational and health care opportunities tend to be the poorest in quality; the percentage of residents who are victims of crime, the highest; and public services such as trash collection, the least effective.

Such areas contain most of the substandard and overcrowded housing in the central city and well over a third of the structures that were built before 1940. None of these factors exist in such heavy concentration elsewhere.[419] Thus, the deleterious effects of poor housing are compounded many times over when they prevail to the virtual exclusion of salutary conditions in central city neighborhoods. These are the neighborhoods where the great majority of urban blacks live.

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41 . In 1968, the Douglas Commission found that density in central city poverty areas was 100 times as great as in like areas outside central cities. Although the central city average is increased by the great bulk and untypically high densities in New York City, all central city poverty areas bear higher densities than elsewhere.

418. Building the American City, p. 77.

419. Ibid., pp. 77-78.

SPANISH ORIGIN AND NATIVE AMERICAN MINORITIES

Although information on housing conditions for other minorities is not as extensive as that for blacks, census data as shown in tables 10 and 11 and evidence from special studies indicate a substantial proportion of other minorities are also ill-housed. Housing opportunities for these groups are severely limited by discriminatory practices in the private housing market and the adverse effects of Federal and local housing policies.

For example, a 1973 study of housing conditions for persons of Spanish origin in Bridgeport, Connecticut, found that:

> Although housing is a problem for all low-income residents, it is magnified within the Spanish speaking community. The influx of Puerto Ricans and other persons of Spanish speaking descent into Bridgeport has filled an already surfeited low-income housing market. Many neighborhoods where Puerto Ricans originally settled have been demolished by city urban renewal projects and families relocated in the city's substandard areas where a great many live in poverty today.
>
> Puerto Ricans are forced to pay high rents for dilapidated housing in Bridgeport. Large apartments with three-to-six bedrooms are scarce and expensive and the Puerto Rican tradition of extended family living often forces families to take older, often substandard housing.... Another factor relegating Puerto Ricans to the slums is their strong linguistic and cultural ties. Spanish speaking friends, relatives, and Spanish newspapers provide a comfortable cushion from the world outside the barrio. This limited access to the English speaking world, however, often prevents the Puerto Rican community from learning of suitable housing elsewhere.[420]

Bridgeport has a Puerto Rican population of approximately 25,000, most of whom are poor and eligible for low-income housing assistance.

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420. El Boricuo, p. 28.

Hindered by the lack of public housing units large enough to house them, or by tenant admission policies, Puerto Ricans have been denied equal access to public housing. In 1973, approximately 16 percent of the total number of public housing units available were occupied by Puerto Ricans, a lower percentage than that for eligible whites and blacks.[421]

The picture is the same for the Puerto Rican population living in Philadelphia. Here, Puerto Ricans are concentrated in specific neighborhoods, have the lowest per capita median annual income of any group,[422] and live in some of the worst housing in the city. Again, the representation of Puerto Ricans in public housing is much lower than for low-income blacks and whites.[423]

Chicanos living in Phoenix, Arizona have similar housing problems. Phoenix has a Chicano population of approximately 60,000 most of whom reside in barrios in South Phoenix. Although 90 percent of the housing of Phoenix blacks is classified as dilapidated and deteriorating, the housing for Chicanos is considered worse.[424] Blacks and Chicanos living in public housing, moreover, are segregated in different projects. Housing for Mexican Americans in Phoenix, moreover, is considered no worse than housing for Mexican Americans elsewhere in the Southwest.[425]

Despite various building programs and the efforts of both public and private agencies, poor housing conditions prevail on many Native American reservations. The Bureau of Indian Affairs (BIA) estimated in 1968 that 68,000 Native American families were living in substandard

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421. Ibid., pp. 32, 35.

422. $5,222 as opposed to $5,558 for blacks and $7,465 for whites.

423. Two percent of the public housing tenants are Puerto Ricans; 85 percent are black; 12 percent are white.

424. Morrison F. Warren, Acting Co-Chairman, Arizona State Advisory Committee, Phoenix, Arizona, Hearing before the U.S. Commission on Civil Rights, Washington, D.C., June 1971, p. 110.

425. See, e.g., Los Angeles County Commission on Human Rights, The Urban Reality: A Comparative Study of the Socio-Economic Situation of Mexican Americans, Negroes, and Anglo-Caucasians in Los Angeles County (1965), pp. 42-54.

housing. Two years later, BIA found that the 1968 estimate was too low; for in 1970, the Bureau found that 63,000 Native Americans were still in substandard housing despite the construction of 4,800 new homes and the renovation of 5,700 other homes in the intervening 2-year period.[426]

In 1970 and 1971, the Indian Health Service (IHS) testified before Congress that many Native American families were living under such atrocious conditions that many of the deaths and injuries of children in these families were directly attributable to unsafe, overcrowded housing.[427] The IHS found that the high infant mortality rate[428] among Native Americans was also associated with the harsh living environment and totally inadequate housing, as were the high mortality rates resulting from infectious diseases, especially among the Navajo population.[429]

For Native Americans who have left reservations seeking greater opportunities in urban areas, housing conditions appear to be as bad as for other minorities. The housing they find tends to be of the poorest qaulity.[430] For example, in a predominantly Native American residential area of north Rapid City, South Dakota, over 14 percent of the homes were so bad that they had to be torn down by the city because they could

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426. Indian Housing in the United States, p. 40.

427. Ibid., pp. 46-48.

428. In the early 1970's the national infant mortality rate was 22.4 per 1,000 live births. For the Navajo population the rate was 42 per 1,000 live births. Ibid., p. 47.

429. In addition to overcrowding and structural defects, such conditions included poor water supply, unsanitary waste disposal, and insect infestation.

430. Charles F. Marden and Gladys Meyer, Minorities in America (New York: 1973), p. 301.

not meet minimum code standards. In many instances, these homes were not replaced. Only 41 percent of the homes in the area met city building code standards in 1974.[431]

In pointing to the housing problems that Native Americans face when they leave reservations, Kathryn Turcotte of the Montana United Indian Association, Havre, Montana, has stated:

> Practically every Indian family lives in an old shack or an old run-down apartment. This is the only thing they can get and some pay as high as $95.00 for these old run-down apartments. The plumbing is usually out of order, the plaster is falling from the ceiling.... landlords generally say... "There's no use fixing it up, because we just rent to Indians."[432]

Because there is a prevailing attitude that Native Americans do not take care of their homes, Native Americans are frequently charged exorbitant rents for substandard housing.[433] In addition, there is

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431. Indian Civil Rights Issues, p. 37.

432. Ibid., p. 37.

433. Ibid., p. 38.

evidence that lease agreements are used by landlords to intimidate Native Americans and prevent them from making complaints about their housing conditions.[434]

HOUSING CONDITIONS OF FAMILIES HEADED BY WOMEN

Census data on housing conditions of women is given for the designation "female headed households." Traditionally, female headed households have been defined as those that do not have a husband present. Women whose incomes provide the majority of support in a husband-wife household, for example, have not been considered household heads even when so designated on census forms by household members. Thus, it has not been possible to determine the extent to which husband-wife households may, in reality, be headed by the wife, or the extent to which such households may in fact, be equal partnerships.[435] Furthermore, housing data for single person households is not given by male-head-female-head subcategories for separate racial and ethnic groups. Thus the information that is available applies only to families that have two or more persons and that are headed solely by women.

1970 census data on housing conditions of women indicates that the incidence of factors such as overcrowding and inadequate plumbing facilities is only slightly greater in two-or-more person homes headed

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434. Ibid., p. 38.

435. U.S., Commission on Civil Rights, Women and Poverty (1974), p. 7. In 1980 the census definition will be changed to permit counting the wife as head, even when the husband is present, if she is so designated by household members.

by women than in those headed by men[436] (table 18). Although the incidence of these conditions is substantially greater among households headed by minority women than households headed by men of all races, it closely approximates the degree of overcrowding and inadequate plumbing found in homes headed by minority men. The rate of homeownership for households headed by women is well below that for households headed by men (47.9 percent and 69.5 percent respectively) and the median value of homes owned by women is somewhat less than those owned by men ($14,200 and $16,900 respectively). Of homes owned by women, 82.3 percent were constructed in 1959 or earlier; of those owned by men 72 percent were in this category.

With respect to the characteristics of residents in and outside poverty areas, a substantially greater proportion of persons in families headed by women lived in low-income areas than persons in families headed by men, regardless of income (see table 19). Of persons in black[437] families headed by women, 64.8 percent lived in low-income areas.

A slightly greater proportion of the single male population lived in low-income areas than of the single female population (table 20). Although this factor holds true for individuals of all incomes, it is not true for single individuals who are poor and who live in low-income areas, 48.6 percent of whom are women and 33 percent of whom are men. The combined effect of discrimination based on race and sex is seen in the figures for black women shown in table 20.

As the foregoing information indicates, minorities and women are far more likely to suffer the adverse effects of poor housing and neighborhood environments than other groups in the American population.

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436. A household may be composed of one or more persons, related or unrelated. The census provides housing characteristics data by male-female subcategories for households of two or more persons; single person households are treated as a unit.

437. Census tabulations are not made for poverty area residence of families or persons of Spanish origin.

TABLE 18

SELECTED CHARACTERISTICS OF HOUSEHOLDS HEADED BY MEN AND WOMEN BY RACE, 1970[1]

Characteristics	All Races		White and Other[2]		Black		Spanish Origin	
	Male	Female	Male	Female	Male	Female	Male	Female
Total occupied units	46,004,556	6,289,683	40,685,902	4,553,521	3,553,834	1,437,667	1,764,820	290,495
Overcrowded units	4,393,564	674,455	3,029,071	250,865	851,416	348,442	513,077	75,148
Percent of total units occ. by household type	9.6%	10.7%	7.4%	5.5%	23.9%	24.2%	28.4%	25.2%
Units lacking some or all plumbing facilities	1,892,235	444,487	1,277,513	209,134	526,850	215,691	87,872	19,662
Percent of total units occ. by household type	4.1%	7.1%	3.1%	4.6%	14.8%	15%	4.8%	6.6%
Overcrowded and lacking some or all plumbing facilities	570,912	128,776	296,848	34,946	224,042	84,840	50,002	8,990
Percent of total units occ. by household type	1.2%	2.1%	0.7%	7.7%	6.3%	5.9%	2.8%	3%
Units owned	32,110,243	3,018,249	30,219,961	2,497,242	1,801,404	432,129	908,943	88,878
Rate of homeownership	69.5%	47.9%	74.1%	54.9%	50.7%	30%	51.7%	29.7%
Median value of owner-occupied homes	$16,900	$14,200	--	--	$11,300	$9,200	$14,650	$11,600
Median gross rent[3]	$117	$105	--	--	$96	$90	$102.50	$97

1. two or more person households.
2. the category of "other" includes all minority racial and ethnic groups except the black and Spanish Origin groups.
3. gross rent is the contract rent plus the estimated average monthly cost of utilities and fuels paid by the renter. Contract rent is the monthly rent agreed to, or contracted for, regardless of furnishings, utilities, or services that may be included.

Source: U.S., Department of Commerce, Bureau of the Census, 1970 Housing Characteristics by Household Composition, Final Report HC(7)-1, Tables A1,2,3,6,7,8,11,12,13.

TABLE 19

LOW-INCOME AREA RESIDENCE--PERSONS IN FAMILIES BY LOW-INCOME STATUS IN 1972, SEX AND RACE OF HEAD

	All Races		White		Black	
	Male Head	Female Head	Male Head	Female Head	Male Head	Female Head
All persons in families (in thousands)	167,928	21,264	151,890	13,739	13,991	7,125
In families in low-income areas	30,681	7,474	23,057	2,764	7,444	4,597
Percent in families in low-income areas	17.8%	32.2%	15.2%	20.4%	51%	64.8%
In low-income families in low-income areas	5,536	4,099	2,509	1,152	1,903	2,892
Percent in low-income families in low-income areas	17.9%	49.1%	54.8%	41.7%	25.6%	62.9%
Percent of all persons in families who are in low-income families in low-income areas	3.3%	19.2%	2.3%	8.4%	13.6%	40.6%

Source: U.S., Department of Commerce, Bureau of the Census, Characteristics of the Low-Income Population: 1972, Current Population Reports, series P-60, no. 91, table 10.

TABLE 20

LOW-INCOME AREA RESIDENCE--UNRELATED INDIVIDUALS BY LOW-INCOME STATUS IN 1972, SEX AND RACE

	All Races		White		Black	
	Male	Female	Male	Female	Male	Female
All unrelated individuals (in thousands)	6,673	10,139	5,485	9,010	1,005	1,023
In low-income areas	1,727	2,342	1,041	1,694	659	622
Percent in low-income areas	25.8%	23%	19.2%	18.8%	65.6%	60.8%
Low-income individuals in low-income areas	570	1,138	302	754	264	379
Percent low-income individuals in low-income areas	33%	48.6%	29%	44.5%	40.1%	60.9%
Percent of all unrelated individuals who are low-income and in low-income areas	8.5%	11.2%	5.5%	8.4%	26.3%	37%

Sources: U.S., Department of Commerce, Bureau of the Census, Characteristics of the Low-Income Population: 1972, Current Population Reports, Series P-60, no. 91, table 10.

Were it not for discrimination on the basis of race and ethnicity in location of federally-assisted housing, and on the basis of race, ethnicity, and sex in providing access to the total housing supply, minorities and women of all income levels, including those at the lowest income levels, would on the whole live in better housing and more healthful environments.

CONCLUSION

Discrimination against minorities and women has been a fundamental operating principle in the Nation's housing market. It arose as an expression of the inferior status to which American society relegated minorities and women early in the Nation's history and has prevailed despite constitutional and other guarantees that, if enforced, would have prevented individual and corporate prejudice from denying equality of housing opportunity to these segments of the American society.

The effect of discrimination in housing has caused untold suffering for minorities and women, especially those at the lower end of the economic scale. It has kept a much larger proportion of minorities and women from acquiring any but the worst housing available in a community. Similarly, it has confined minorities to residence in circumscribed neighborhoods and, until recently, the construction of federally-assisted lower-income housing to minority or low-income areas. This, in turn, has distorted patterns of urban growth, cut off minorities from access to growing suburban employment markets, subverted efforts to desegregate public schools and equalize the quality of public school education, and caused inequitable distribution of the burden of providing essential services to lower-income urban populations. In rural areas, discrimination in Federal housing programs and appalling insensitivity to the needs of Native Americans has resulted in the denial to many minorities of Federal assistance, virtually the only means through which decent housing can be obtained.

On the one hand, the Federal Government, in attempting to cope with the problem of poor housing, has operated largely within the system of housing discrimination established long before the Government entered the housing market. The Federal Government has been timid in its approach to stimulating lower-income housing production in areas in which whites, and particularly middle- and upper-income whites, reside. Administratively and in housing legislation, the Federal Government has espoused the goal of lower-income housing dispersal. Despite

success in some instances, however, the actions of the government in catering to exclusionary desires of whites and in abruptly terminating federally-assisted housing programs in 1973 while providing no immediate alternatives belie the Government's determination to achieve this goal. With few exceptions, this assessment holds true for similar State administrative and legislative efforts as well. Only in Federal and State adjudication of exclusionary land use issues are there signs of an understanding of the steps that must be taken if there is to be real commitment to dispersal. In addition, the allocation of national resources to the elimination of poor housing conditions has been insufficient to accomplish the task. Thus, the results of Federal efforts have failed to serve lower-income minorities and women equitably

On the other hand, the efforts of the Federal Government over the past decade and a half to legislate discrimination out of the housing market has been piecemeal. Not until 1968 did the prohibitions against racial and ethnic discrimination in housing as set forth in Title VIII combine with the concurrent judicial rendering of the Civil Rights Act of 1866 in Jones v. Mayer to provide a comprehensive national policy requiring equal housing opportunity for minority citizens. Even at that, full coverage of Title VIII did not occur until 1970 and the prohibition against discrimination in the sale or rental of housing on the basis of sex did not come until amendment of Title VIII in 1974. This piecemeal approach and the lack of vigorous enforcement of fair housing law at the Federal, State, and local levels have militated against full realization of the law's potential.

At this juncture in our Nation's history, therefore, the Commission finds that the forces promoting discrimination in housing hold powerful, if less than universal, sway. These forces will be curbed only by new dedication of national resources and fair housing enforcement efforts to the creation of many more rental and homeownership opportunities for minorities and women of all incomes, in good

housing located in a full variety of viable urban neighborhoods, and in rural areas and on Native American reservations as well.

FINDINGS

GENERAL FINDING

Two basic facts constitute the Nation's central housing problem:

a. First, a considerable number of Americans, by reason of their color, race, national origin, or sex, are being denied equal opportunity in housing.

b. Second, the housing problems of minorities and women are part of a national housing crisis involving a general shortage of low-cost housing.[1]

Despite the effort that has been exerted by the Federal Government, State and local fair housing agencies, and other organizations to improve housing conditions and opportunities, these problems persist.

Discriminatory forces continue to restrict the rights of minorities and women to equality of housing opportunity in the Nation's housing market. Factors such as poor administration of housing programs for Native Americans and poor enforcement of fair housing laws, though perhaps not discriminatory in intent, have decidedly adverse effects on the housing opportunities of minorities and women.

The production of low- and moderate-income housing has declined drastically since Congress first committed the Nation's resources to the production of 600,000 units for low- and moderate-income families each year between 1968 and 1978. As a result of the 1973

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1. In 1959 and again in 1961, the U.S. Commission on Civil Rights identified these as the basic factors of the Nation's housing problem, although at that time the issue of sex discrimination in housing was not addressed.

moratorium on subsidized housing and the limited authorization of the 1974 Housing and Community Development Act, it is clear that the elimination of poor housing conditions for lower-income Americans is not a foremost concern of the Government.

LOWER-INCOME HOUSING PRODUCTION

1. Congress and the President have abandoned the goals of the Housing Act of 1968 for the production and rehabilitation of low- and moderate-income housing.

Few programs, if any, are more crucial to the Nation's welfare than the provision of decent housing for Americans at the lower end of the income scale. The degree of Federal commitment of our national resources to the elimination of unfit housing and to the improvement of poor neighborhood environments will determine the fate of hundreds of central city areas throughout the Nation and the quality of life in rural areas. In the initial years following enactment of the 1968 housing goals, it appeared that the Nation might achieve the elimination of poor housing conditions by 1978 through the production or rehabilitation of 6 million units for urban and rural low- and moderate-income families. With the imposition of the moratorium on virtually all subsidized housing programs in January 1973, however, production of housing for families with the greatest need declined drastically. In the Housing and Community Development Act of 1974, Congress has provided a housing package which holds no promise of providing in excess of the 600,000 units needed yearly to make up for the shortfalls in production between 1968 and 1974 and meet average production levels set in 1968 for the years 1975 through 1978. Nor will the recent lifting of the moratorium on 235 housing enable the Federal Government to provide the housing that is required. The revised 235 program, moreover, because of the new financial requirements, will not meet the needs of low income families.

Thus, rather than eliminating substandard and overcrowded housing, the Federal Government has elected to permit the severe shortage in decent, lower-income housing to continue indefinitely. Because improvement in housing conditions is a key element in the effort to

eliminate discrimination in housing, particularly as it affects lower-income minorities and women, the current policy of the Government precludes the creation of a society in which all Americans, regardless of race, color, national origin, or sex, have full and equal access to good housing suitable to their needs at prices they can afford.

HOMEOWNERSHIP OPPORTUNITIES FOR MINORITIES AND WOMEN

2. Minority families and families headed by women are affected most severely by the suspension of the section 235 program in January 1973, by HUD's refusal to implement the provision for 235 housing in the 1974 Housing and Community Development Act, and by HUD's failure, so far, to implement the provisions of this act that would create homeownership opportunities for lower-income families through public housing and the section 8 program of housing assistance payments.

The provision of homeownership opportunities for lower-income families is an important aspect of efforts to equalize housing opportunities between minority families and white families and between families headed by women and those headed by men.

In its 1971 study of the 235 homeownership program, the U.S. Commission on Civil Rights found that it was of substantial help to many lower-income minority families by enabling them to acquire good-quality housing and to enjoy the benefits, both material and psychological, of homeownership.[2] Because a greater proportion of the minority and female population subgroups have lower income than whites or males, a greater proportion is in need of special financial assistance in order to become homeowners. Thus, denial of assistance of this kind is discriminatory in its impact.

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2. Homeownership for Lower Income Families, p. 89.

The new funding for the 235 program will be of no benefit for most low income families. The new financial requirements imposed by HUD will limit the utility of the program to moderate income families with significant savings. The revised program apparently is based on the premise that low income families lack the managerial skills and foresight necessary for successful home ownership. Experience under the 235 program, and the experience of millions of lower income families who are successful homeowners, does not support this premise.

3. Discriminatory mortgage lending practices have restricted the homeownership opportunities of middle-income minorities and women, thereby subjecting them more often to higher housing costs and inferior housing and denying them a principal means of saving and accumulating wealth.

Minorities and women who are financially able to purchase homes have been denied this opportunity because of their sex or race. This fact has had repercussions far beyond variations in homeownership rates between whites and minorities or males and females. Restrictions on homeownership have forced many minority families and families headed by women to live in housing that is not suitable to their needs, often at higher cost than would be the case had their housing choice been unrestricted.

The Equal Credit Opportunity Act, enacted October 28, 1974, should assist women in obtaining mortgage financing, if it is properly enforced by the Federal financial regulatory agencies.

ENFORCEMENT OF FAIR HOUSING LAWS BY FEDERAL AGENCIES

4. The steps that Federal agencies have taken to implement Title VIII of the Civil Rights Act of 1968 have failed to have a major impact in reducing racial, ethnic, and sex discrimination in housing.[3]

Among the many weaknesses in Federal agency enforcement are the failure of HUD to exercise a strong leadership role among Federal agencies to effect fair housing goals, to monitor affirmative marketing plans adequately, and to conduct community-wide compliance reviews; the failure of Veterans Administration and Farmers Home Administration to provide strong affirmative marketing regulations; and the failure of the Federal financial regulatory agencies to issue adequate regulations prohibiting discrimination against minorities and women in the mortgage lending industry; and the failure of both HUD and General Services Administration to follow procedures provided for in the HUD-GSA memorandum of understanding that would assure open housing and an adequate supply of lower-income housing in communities selected as sites for Federal facilities.

5. The methods by which HUD is authorized to settle Title VIII complaints of discrimination in the sale or rental of housing have proved to be inadequate to bring about prompt compliance with the law.[4]

HUD's effectiveness in resolving complaints of discrimination under Title VIII is hampered by limitations on the ways HUD may obtain compliance. In the event there is a refusal to comply with Title VIII,

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3. This general finding, as well as a number of specific findings, was set forth in The Federal Enforcement Effort--1974, vol. II, "To Provide for Fair Housing," released by the Commission in December 1974. See pp. 328-45.

4. The Commission also made this finding in The Federal Enforcement Effort, (1974) p. 323.

HUD cannot issue a cease-and-desist order but is confined to methods of conference, conciliation, and persuasion. When these fail HUD's only alternative is to refer the complaint to the Department of Justice for litigation.

METROPOLITAN RESIDENTIAL SEGREGATION

6. The Federal Government, which has played a dominant role in shaping urban growth and development, has been a major factor in the creation of segregated residential neighborhoods throughout metropolitan areas of the United States.

In shaping urban growth, the Federal Government has provided a variety of programs for the development of housing and community facilities. Federally-assisted highway and water and sewer construction and FHA and VA housing programs have been instrumental to the development of suburbs. Federally-assisted urban renewal has been the single most significant factor in the reshaping of central city neighborhoods. In providing this assistance, the Government took first an active and then a passive part in the creation of racially segregated residential neighborhoods until issuance of Executive Order 11063 in 1962. Enforcement of Executive Order 11063 and subsequent civil rights laws has not succeeded in altering significantly the entrenched patterns of segregation resulting from earlier Federal program administration and private housing market policies.

The position taken by the Solicitor General in a brief submitted to the Supreme Court in Gautreaux v. Hills indicates that the Federal Government is still unwilling to take effective action to promote residential desegregation. The Government's position in Gautreaux is that metropolitan remedies for segregation in central city public housing should not be ordered. A metropolitan remedy, however, is both feasible and necessary, if desegregation is to be accomplished.

7. The Housing and Community Development Act of 1974 provides the means for a new approach to providing for lower-income housing dispersal throughout metropolitan areas.

The current Housing and Community Development Act breaks with the past by requiring communities to provide lower-income housing as a condition of receiving community development block grant assistance. However, there is need for assurance that this requirement will actually result in substantial lower-income housing dispersal throughout metropolitan areas or a deconcentration of low-income families in central cities. The financial restrictions placed on the revised 235 program will make it more difficult for communities to provide lower-income housing through homeownership programs.

THE SECTION 8 HOUSING ALLOWANCE PROGRAM SHOPPER'S INCENTIVE

8. The shopper's incentive offered by HUD to families eligible to receive section 8 assistance who find existing housing at below fair market rent prices will enable the Federal Government to assist the housing needs of more families for the same amount of money and will help to maintain the existing housing stock.

A defect in some Federal aid programs is that the recipient has no financial incentive to use the Federal money economically. The shopper's incentive program will benefit both the recipient and the Federal Government by enabling both to share in the savings resulting from consumer bargain hunting.

9. However, the shopper's incentive may inhibit movement to neighborhoods outside of areas of minority or low-income concentration.

A primary objective of the Housing and Community Development Act of 1974 is the deconcentration of lower-income persons in urban areas through the provision of lower-income housing opportunities in neighborhoods outside low-income areas and the revitalization of slums and deteriorating neighborhoods to attract higher income residents. The principal program through which dispersion of lower-income housing

opportunities is to be achieved is the section 8 housing allowance program.

HUD's regulations governing the location of housing that families eligible for section 8 assistance may utilize address this objective only with respect to newly-constructed and substantially rehabilitated housing. Existing housing is not covered by any site selection criteria. In addition, HUD is offering a shopper's incentive to encourage families utilizing existing housing to shop around for the cheapest suitable housing available. If the cheapest suitable existing housing found in a housing market area is in low-income and minority neighborhoods, the shopper's incentive may simply act to reinforce segregated urban residential patterns.

HOUSING FOR NATIVE AMERICANS ON RESERVATIONS

10. The goal of eliminating substandard housing for Native Americans on reservations will not be achieved unless Federal housing programs for Native Americans are substantially improved and accelerated.

For over a decade, the Federal Government has operated housing programs designed specifically to alleviate the deplorable housing conditions which exist on Native Americans reservations. As studies of the Housing Assistance Council and the Senate Committee on Interior and Insular Affairs have found, however, progress under these programs has been poor because of bureaucratic mismanagement, insufficient funding, and insensitivity to the desires and unique lifestyles of Native Americans.

RESIDENTIAL AND SCHOOL SEGREGATION

11. School systems in many of the nation's largest cities and metropolitan areas are becoming increasingly segregated as a result of segregated housing patterns.

Residential patterns in metropolitan areas have become increasingly racially and economically polarized as a result of the suburban housing boom, discrimination in the sale and rental of housing, and zoning practices and building regulations that exclude low and moderate housing. Housing segregation has in turn contributed to the spread of segregated schools and the denial of equal educational opportunities.

RECOMMENDATIONS

LOWER INCOME HOUSING PRODUCTION

1. Congress should renew its 1968 commitment to provide 6 million units of low- and moderate-income housing by 1978. This recommendation requires that Congress authorize funds for at least 600,000 units per year between now and 1978.

Renewing the commitment to 1968 housing goals requires a reassessment of current national priorities in order to increase the percentage of Federal funds allotted to federally-assisted housing. In light of the urgent need for lower-income housing, a need that has undoubtedly increased as a result of the current economic crisis, this reassessment should be made.

HOMEOWNERSHIP OPPORTUNITIES FOR MINORITIES AND WOMEN

2. The President should require HUD, through the section 8 and public housing programs, to implement the provisions of the Housing and Community Development Act of 1974 that authorize funds for 235 housing and lower-income homeownership.

Encouragement of homeownership among lower-income minority and female-headed families is an important aspect of eliminating the effects of discrimination in housing. When the 235 program started, there was a recognition of the importance of providing a significant number of homeownership opportunities for lower-income families, a need that is especially great among lower-income minority families and families headed by women. HUD, however, endorsed the suspension of the 235 program in 1973 and has not implemented other provisions of the 1974 act that encourage lower-income homeownership. The new funding provided in 1975 for the 235 program will not, because of the stringent financial requirements imposed, help those lower-income families most in need. Thus, the Commission recommends that the President reestablish lower-

income homeownership as a central goal of the Nation's housing policy and direct the Secretary of HUD to fulfill HUD's responsibilities under the 1974 act.

3. Congress should establish a special mortgage insurance and loan program for middle-income minority families and families headed by women, with the objective of substantially narrowing the gap between homeownership rates of these families and those of white families and families headed by males.

The Commission believes there is ample justification and precedent for the development of a special program of mortgage insurance and loans to promote greater homeownership among middle-income minority families and families headed by women. Recent congressional approval of a measure that would allow up to $2,000 in tax credits to families purchasing new homes built or under construction by March 25, 1975, and the Small Business Administration program to promote minority enterprise both assist specific groups within the general population.

ENFORCEMENT OF FAIR HOUSING BY FEDERAL AGENCIES

4. The President should direct the Secretary of the Department of Housing and Urban Development and the heads of all other Federal agencies with fair housing responsibilities to give priority to the enforcement of Title VIII of the Civil Rights Act of 1968, by undertaking a major new effort to end racial, ethnic, and sex discrimination in housing.

In The Federal Enforcement Effort--1974, volume II, the U.S. Commission on Civil Rights made a number of specific recommendations for action that would strengthen the Federal fair housing enforcement effort.[5] The Commission again endorses these recommendations.

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5. Pp. 346-61.

They include the following:

1. "The fair housing responsibilities of the Federal Government should be restructured. The Veterans Administration, the General Services Administration, the financial regulatory agencies, and all other agencies with fair housing responsibilities should draft comprehensive regulations detailing the duties of those affected by their programs and activities....These draft regulations should be subject to approval by HUD. When the regulations are issued, the agencies should delegate their implementation to HUD....The agencies would retain the duty to conduct all of their programs in a manner to affirmatively further the purposes of fair housing, and impose sanctions in the event that they are informed of noncompliance with their regulations by HUD."

2. "The President should direct the Secretary of the Department of Housing and Urban Development to make enforcement of fair housing provisions a higher departmental priority in order to accomplish the following major objectives within the next 12 months in that area:

a. HUD should, within the next year, allocate sufficient resources to conduct at least 50 comprehensive communitywide Title VIII compliance reviews of all major institutions which affect the production, sale, and rental of housing....

b. Where housing discrimination is found as a result of these communitywide reviews which cannot be corrected by HUD under its Title VIII authority, it should use all other leverage it has to bring about nondiscrimination in housing including, where appropriate, the termination of financial assistance under Title VI and Executive Order 11063.

c. HUD should make the submission of an affirmative plan for widening housing opportunities for minorities, women, and persons of low income an absolute requirement for participation in its housing activities..."

HUD should also formulate a policy pursuant to Title VIII that will provide communities with a comprehensive guideline for actions

that communities should take to remove barriers to fair housing for minorities and women. These steps include the careful examination of current zoning ordinances, building codes, land use policies and requirements, real estate practices, and rental policies and the revision of those that prohibit or discourage the provision of housing opportunities for minorities and women, particularly those with low incomes.

5. Congress should amend Title VIII of the Civil Rights Act of 1968 to authorize HUD to issue cease-and-desist orders to end discriminatory housing practices.[6]

HUD's ability to resolve Title VIII complaints is severely hampered by the restriction of HUD's powers to conciliation. If unsuccessful, HUD's current complaint procedures that call for referral of an unsuccessfully conciliated complaint to the Department of Justice necessitate delays that are inconsistent with the need for efficient processing of Title VIII complaints. If HUD had the authority to issue cease-and-desist orders, Title VIII complainants could be assured a more timely resolution of their complaints.

EQUAL CREDIT OPPORTUNITY

6. The Equal Credit Opportunity Act, which prohibits discrimination on the basis of sex and marital status, should be amended to include race, color, religion, national origin, and age.

In today's society the availability of credit influences many aspects of life and directly affects the standard of living of most Americans. While the Equal Credit Opportunity Act is important in providing women and single persons fair access to credit opportunities, equal credit opportunities should be assured for all Americans.

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6. The Commission also made this recommendation in The Federal Enforcement Effort, p. 347.

FACILITATION OF METROPOLITAN RESIDENTIAL DESEGREGATION

7. Congress should require each State, as a precondition to the receipt of future Federal housing and community development grants, to establish, within one year, a metropolitan housing and community development agency in each metropolitan area within its borders, or to create a State metropolitan housing and community development agency with statewide authority, for the purpose of facilitating free housing choice throughout metropolitan areas, particularly for lower-income minority and female-headed families.

In its 1974 report entitled Equal Opportunity in Suburbia, the U.S. Commission on Civil Rights recommended that Congress provide funds to States to finance the planning, establishment, and operation of metropolitan housing and community development agencies. The Commission again makes this recommendation.

Each political subdivision in a metropolitan area should be represented in the agency based on population within each jurisdiction, with provisions made for representation by minorities and economically disadvantaged groups. With respect to the provision of low- and moderate-income housing, a metropolitan housing and community development agency should have the power:

a. To allocate low- and moderate-income units to each jurisdiction based on current and projected needs for such housing within that jurisdiction and the metropolitan area as a whole.

b. To determine the locations of low- and moderate-income housing in order to provide for a balanced distribution of such housing throughout the metropolitan areas and the deconcentration of lower-income families, in particular, lower-income minority and female-headed families.

c. To override various local and State laws and regulations, such as restrictive zoning ordinances or other devices that impede implementation of a plan for balanced distribution of low- and moderate-income units.

d. To provide a metropolitan certification process for section 8 housing allowance recipients through which eligible families would have an opportunity to seek appropriate housing throughout the metropolitan area, without having to establish eligibility for housing assistance in each locality in which the family might wish to reside, as is now required.

e. To establish offices, readily accessible to neighborhoods with a high proportion of lower-income households, to advise lower-income families and organizations representing their interests concerning all subsidized housing available in the metropolitan area. The Commission first recommended the establishment of such offices in its June 1971 report, Homeownership for Lower Income Families. The function of these offices would be to provide information about the following:

(1) "Which programs are being operated in the particular metropolitan area."

(2) "The location of the housing being provided under each program and the identity of the builder or sponsor."

(3) "The price or rental range of housing in each subdivision or project."

(4) "The qualifications necessary for eligibility to obtain housing in each such subdivision or project."

(5) "An analysis of each individual family's needs and resources and advice as to the kind of program and housing that would best meet its needs."

(6) "Advice as to the nature and amount of the subsidy available in each program for which the family is eligible, so as to assure that the family will be in a position to obtain the full benefit of the assistance that exists."

(7) "Advice on the rights and responsibilities of homeownership, including equity rights, income tax advantages, and physical upkeep of the property."

(8) "A description of the procedures and steps that the family must follow to obtain the housing."

(9) "Advice on their rights in the event families should encounter racial, ethnic, sex, or economic discrimination on the part of builders or sponsors."

(10) "In those areas where there are families which have difficulty communicating in English, the neighborhood offices should provide staff members who are fluent in languages other than English."[7]

f. To monitor performance under the affirmative marketing plans that are required of developers, sponsors, and others who participate in providing housing through HUD and VA housing programs, as well as of those voluntary, community-wide plans negotiated by HUD with builders and realtors in a specific metropolitan area.

g. To plan for the revitalization of deteriorating or deteriorated neighborhoods in such manner as to provide for a wide variety of new or rehabilitated housing for persons at all income levels. The aim of this plan should be to promote improved neighborhood environments as well as economic diversification within such areas as part of the overall effort to reduce the concentration and isolation of lower-income groups.

The U.S. Commission on Civil Rights believes that the severe economic and racial polarization that characterizes residential patterns in metropolitan areas cannot be reduced significantly by Federal housing programs that permit local communities to act independently in determining what, if any, lower-income housing needs will be serviced within their jurisdictions. Although the Housing and Community Development Act of 1974 ties the provision of lower-income housing to receipt of

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7. Homeownership for Lower Income Families, pp. 90-91.

community development block grant funds, this legislation still permits localities not to act or to act apart from the need for deconcentrating lower-income families in central cities. As long as this situation prevails, residential segregation will not be significantly reduced.

Thus, the Commission calls for the establishment of a metropolitan agency, vested with the authority to plan and implement a program for metropolitan housing development. The program would provide within each community sufficient, lower-income housing resources to meet the current and projected needs of each community as well as the need within the metropolitan area as a whole, particularly that which results from efforts to reduce the heavy concentrations of lower-income families in a particular jurisdiction, such as a central city.

In addition, an important aspect of servicing lower-income housing needs is the provision of housing information and counseling services to lower-income families, in order that they may be fully aware of the benefits available to them. For such families, access to this information is often difficult unless a special effort is undertaken to contact them in the neighborhoods in which they currently reside. The metropolitan agency would be particularly well suited to provide an outreach of this kind.

8. The Department of Justice should change its position before the Supreme Court in Gautreaux v. Hills, to support a metropolitan solution for segregated public housing.

The position taken by the Department is inconsistent with the policy established by Congress in the Fair Housing Act of 1968 and the Housing and Community Development Act of 1975 and is not required by legal precedents. The Department's position is not supportive of the development nationwide of desegregated residential patterns; it contributes moreover, to the continuation of segregation in the schools.

9. HUD should provide a special financial incentive, in addition to the shopper's incentive, under which the contribution made by the assisted family towards rent would be reduced when the family selects housing in a neighborhood in which the residents are not predominantly of the same race or ethnic group as the assisted family. When the assisted family finds below-fair-market rent housing in such a neighborhood, the shopper's incentive would be offered in addition to the special financial incentive.

The existing housing portion of the section 8 housing allowance program has no site selection criteria. The Commission believes that current patterns of residential segregation are likely to be reinforced in the selection of existing housing, unless assisted minority families, in particular, are encouraged to seek housing outside minority and low-income areas. The special financial incentive would provide such encouragement.

COORDINATION OF HOUSING PROGRAMS FOR NATIVE AMERICANS ON RESERVATIONS

10. The President should vest responsibility for the coordination of all reservation housing and community development activities in a single Federal agency in order to improve their administration at the Federal level. To determine the best method of coordination, the President should immediately create a Native American housing task force to evaluate the entire Federal approach to Native American housing development and propose ways to increase its effectiveness.

The task force should be composed of representatives of tribal housing programs, tribal governments, national and regional Native American organizations, appropriate Federal and State housing agencies, and appropriate congressional committees.[8] The task

8. The Housing Assistance Council made this recommendation in "Toward an Indian Housing Delivery System," pp. 8 and 9.

force should propose the method it believes would be most appropriate for ensuring coordination among the various Federal agencies with responsibilities for reservation housing programs, and it should recommend the Federal agency to be given responsibility for overall coordination. In addition, the task force should propose ways to improve the design of reservation housing programs in order that they may be more responsive to such factors as the environment on reservations and the unique cultural heritage of Native Americans.